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# Electoral Governance: Understanding the Democratic Quality of Elections in Nigeria

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PhD Politics

The University of Edinburgh

2015

*Declaration*

I declare that except where otherwise indicated, this thesis is entirely my own work, and that no part of it has been submitted for any other degree or professional qualification.

.....

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## *List of Acronyms*

AA	<i>Action Alliance</i>
AC	<i>Action Congress</i>
ACN	<i>Action Congress of Nigeria</i>
AD	<i>Alliance for Democracy</i>
ACD	<i>Advance Congress of Democrats</i>
AG	<i>Action Group</i>
ANPP	<i>All Nigerian People's Party</i>
APP	<i>All People's Party</i>
APGA	<i>All Progressive Grand Alliances</i>
ARP	<i>African Renaissance Party</i>
AU	<i>African Union</i>
CEDDERT	<i>Center for Democracy and Development, Research and Training</i>
CENA	<i>Commissio Electorale Nationale Autonome</i>
CDD	<i>Centre for Democracy and Development</i>
CITAD	<i>Centre for Information Technology and Development</i>
CJN	<i>Chief Justice of the Federation</i>
CNE	<i>National Electoral Commission</i>
CoA	<i>Court of Appeal</i>
CODESRIA	<i>Council for the Development of Social Science Research in Africa</i>
CPC	<i>Congress for Progressive Change</i>
DDCM	<i>Direct Data Capturing Machine</i>
DEAN	<i>Democracy and Electoral Assistance Units of African Union</i>
DFID	<i>Department for International Development</i>
DGAPE	<i>Directorate-General for Electoral Process</i>
DPP	<i>Democratic People's Party</i>
EASI	<i>Election Administration System Index</i>
ECN	<i>Electoral Commission of Nigeria</i>
ECG	<i>Electoral Commission of Ghana</i>
EFCC	<i>Economic and Financial Crime Commission</i>
EIU	<i>Economic Intelligence Unit</i>
EMBs	<i>Electoral Management Bodies</i>
EPOP-UK	<i>Election Political Party and Pressure Group - UK</i>
EPT/PEPT	<i>Election Petition Tribunal/Presidential Election Petition Tribunal</i>
ERC	<i>Election Reform Committee</i>
EU EOM	<i>European Union Election Observation Mission</i>
EU	<i>European Union</i>
FCT	<i>Federal Capital Territory</i>
FEC	<i>Federal Electoral Commission</i>
FEDECO	<i>Federal Electoral Commission</i>
FES	<i>Friedrich-Ebert-Stiftung</i>
FGN	<i>Federal Government of Nigeria</i>
FH	<i>Freedom House</i>

<i>FJSC</i>	<i>Federal Judicial Service Commission</i>
<i>FOMWAN</i>	<i>Federation of Muslim Women's Association of Nigeria</i>
<i>HDR</i>	<i>Human Development Report</i>
<i>HRW</i>	<i>Human Rights Watch</i>
<i>IDEA</i>	<i>International Institute for Democracy and Electoral Assistance</i>
<i>IFES</i>	<i>International Foundation for Electoral Systems</i>
<i>IIAG</i>	<i>Ibrahim Index of African Governance</i>
<i>INEC</i>	<i>Independent National Electoral Commission</i>
<i>IRI</i>	<i>International Republican Institute</i>
<i>JDPC</i>	<i>Justice, Development and Peace/Caritas</i>
<i>KANU</i>	<i>Kenya Africa National Union</i>
<i>LDC</i>	<i>Legal Defence Centre</i>
<i>LDPN</i>	<i>Liberal Democratic Party of Nigeria</i>
<i>LGA</i>	<i>Local Government Area</i>
<i>LGEA</i>	<i>Local Government Education Authority</i>
<i>LP</i>	<i>Labour Party</i>
<i>MMN</i>	<i>Masses Movement of Nigeria</i>
<i>NAC</i>	<i>National Action Council</i>
<i>NAN</i>	<i>News Agency of Nigeria</i>
<i>NBA</i>	<i>Nigerian Bar Association</i>
<i>NCNC</i>	<i>National Council of Nigeria and the Cameroons</i>
<i>NDI</i>	<i>National Democratic Institute</i>
<i>NDP</i>	<i>National Democratic Party</i>
<i>NEC</i>	<i>National Electoral Commission</i>
<i>NEDG</i>	<i>Nigerian Election Debate Group</i>
<i>NEPU</i>	<i>Northern Elements Progressive Union</i>
<i>NJC</i>	<i>National Judicial Council</i>
<i>NPC</i>	<i>National Population Commission</i>
<i>NPC</i>	<i>Northern People's Congress</i>
<i>NPN</i>	<i>National Party of Nigeria</i>
<i>NPP</i>	<i>Nigeria People's Party</i>
<i>NPP</i>	<i>New Patriotic Party</i>
<i>NTA</i>	<i>Nigerian Television Authority</i>
<i>NYSC</i>	<i>National Youth Service Commission</i>
<i>OAU</i>	<i>Organisation of African Union</i>
<i>PCA</i>	<i>President Court of Appeal</i>
<i>PDP</i>	<i>People's Democratic Party</i>
<i>PPA</i>	<i>Progressive People Alliance</i>
<i>PSC</i>	<i>Project Swift Count</i>
<i>RECs</i>	<i>Resident Electoral Commissioners</i>
<i>REMOBS</i>	<i>Re-modified Ballot System</i>
<i>SLPP</i>	<i>Sierra Leone People's Party</i>
<i>TMG</i>	<i>Transition Monitoring Group</i>
<i>UPN</i>	<i>Unity Party of Nigeria</i>

<i>UNDP</i>	<i>United Nations Development Programme</i>
<i>UNDHR</i>	<i>Universal Declaration of Human Rights</i>
<i>VAP</i>	<i>Voting Age Population</i>

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### *Abstract*

This thesis explores the potential impacts of electoral governance on the democratic quality of elections in Nigeria. It concentrates on the debates over the role electoral administration in securing the credibility of elections in emerging democracies, using Nigeria as an example. The thesis argues that the explanation of democratic quality of elections is best approached through comparative case studies, relying on detailed accounts of election observers, interview respondents and the perceptions of the electorate.

Drawing insights from the literature on democratisation, the thesis offers a straightforward conceptual and methodological model for gauging the democratic quality of elections, emphasising the relevance of electoral governance in Nigeria. It is a comparative study of the conduct of the 2007 and the 2011 elections that shared various social and institutional variables but differ in significant ways. The case comparison illustrates how the institutional dynamics of election management influence elections quality, explaining the various interconnections between the democratic quality of elections and electoral governance in Nigeria. It provides a contextual explanation of key political terms like participation, competition and perceived legitimacy.

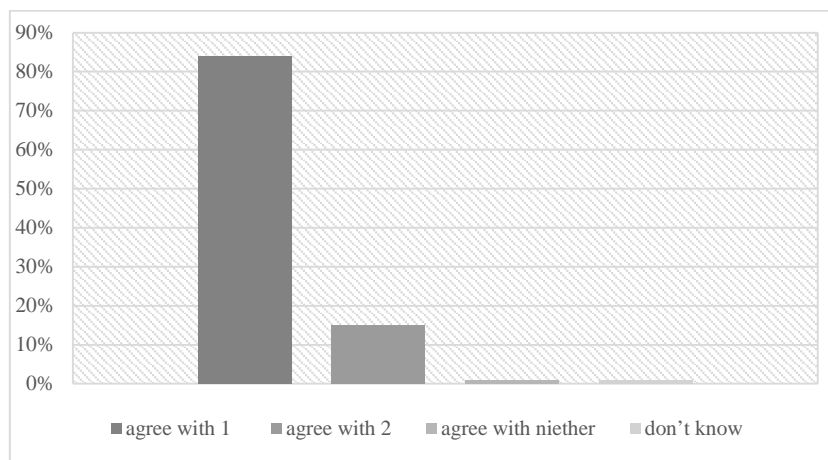
The failures and achievements recorded in the 2007 and 2011 general elections respectively depend on effective electoral governance. The restructuring of the autonomy of the Independent National Electoral Commission (INEC) and improvement of the electoral cycles recorded in the 2011 elections plus the active contribution of the electoral courts and tribunals set the stage for an increasingly fair political engagements of contestants. It has enhanced the quality of individual voter participation in the 2011 elections. These case-based findings substantiate, empirically, various assumptions in the literature, particularly those explicit in the work of Mozaffar & Schedler (2002) and Elklit & Reynolds, (2002; 2005).

## Chapter 1 Introduction

### 1.1 The Problem

Democracy has become a universal political concept.<sup>1</sup> As a political process that seeks to make people the ultimate source of authority, multiparty elections are the most attractive aspect of democracy. Today, elections have occurred in almost all parts of the globe. Even Africa's sit-tight leaders have accepted regular multiparty elections. Indeed, cross-national evidence indicates that the majority (84%) of African people prefer to choose their leaders through regular, open and honest elections (Figure 1.1). The Figure shows that only a few doubt the use of elections as the legitimate route to political power.

Figure 1.1 Choose Leaders Through: (1) Regular & Honest Elections or (2) Other Methods



Sources: Afrobarometer Round (n = 49,204 weighted result)<sup>2</sup>

<sup>1</sup> It has become a political mantra among policy makers and analysts (Coppedge, et al., 2011).

<sup>2</sup> This is recoded data from Afrobarometer Round 5 (2010-2012) covering: Algeria 2013, Benin 2012, Botswana 2012, Burkina Faso 2012, Burundi 2012, Cameroon 2013, Cape Verde 2011, Côte d'Ivoire 2013, Egypt 2013, Ghana 2012, Guinea 2013, Kenya 2011, Lesotho 2012, Liberia 2012, Madagascar 2013, Malawi 2012, Mali 2012, Mauritius 2012, Morocco 2013, Mozambique 2012, Namibia 2012, Niger 2013, Nigeria 2012, Senegal 2013, Sierra Leone 2012, South

Elections are democratic when they provide equal voter suffrage conducted using genuine voter list, adequate electoral materials, and when the electoral process is free from fraud, repression or intimidation such that all contestants operate freely. That is they are participatory, competitive and perceived as legitimate route to political power. However, while democratic elections are participatory, competitive and perceived as the legitimate route to power, experience indicates that not all elections are democratic. Typical examples are the presidential elections of 2007, 2008, 2010 and 2011 in Kenya, Zimbabwe, Cote d'Ivoire and Nigeria respectively. In all these countries, electoral victories were declared despite various irregularities compromising the credibility of the process. All domestic and foreign election observers, academic sources and a large percentage of Nigerians appear to agree that the 2007 elections in Nigeria were the worst in the country's post-independence electoral history.<sup>3</sup> Indeed, the apparent picture across African democracies from the late 1960s to the present is that of retrogression instead of progression.<sup>4</sup> However, questions of electoral credibility equally resonate in established democracies.<sup>5</sup>

The growing decline of democratic quality across the globe in the early 2000s has stimulated a robust research agenda in political science, beginning with Thomas Carothers' *'end of transitions*

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Africa 2011, Swaziland 2013, Tanzania 2012, Togo 2012, Tunisia 2013, Uganda 2012, Zambia 2012, Zimbabwe 2012. The question reads: 'Which of the following statements is closest to your view? *Statement 1*: We should choose our leaders in this country through regular, open and honest elections; *Statement 2*: Since elections sometimes produce bad results, we should adopt other methods for choosing this country's leaders.

<sup>3</sup> See for example the election monitoring reports by ERC, 2008; TMG, 2007; LDC, 2009; DFID, 2008; NDI, 2008; EU EOM, 2007; CDD, 2007; Omotola, 2009; Suberu, 2010; Tar & Zack-Williams, 2007).

<sup>4</sup> Only five out of 43 countries were found to have democratised and two have reverted to electoral authoritarianism (Bogaards, 2013). See also Bratton 2013.

<sup>5</sup> See also (Stewart, 2006; Mills, 2002), (BBC, 2010), (The Scotsman, 2014), and (The Electoral Commission, 2010).

*paradigm*,<sup>6</sup> that seeks to convince comparative scholars to focus on electoral authoritarianism.<sup>7</sup>

Electoral authoritarianism includes elections which do not meet the democratic standard of freeness and fairness, recycling incumbents and frustrating democratisation (Morse, 2012, p. 162). While this movement provides useful explanations of hybrid regimes,<sup>8</sup> it does not resolve the question of the role of elections in democratisation or provide a comprehensive conceptualisation for assessing the democratic quality of elections. What then constitutes democratic elections and how do the institutional dynamics of electoral governance influence the democratic quality of elections?

This thesis examines the democratic quality of elections in Nigeria's 2007 and 2011 general elections, evaluating the possible impacts of electoral governance on the conduct of democratic elections in the country. Specifically, it covers the electoral planning and design, electoral processes and extends to the period when electoral disputes are resolved. In this way, all relevant activities from the pre-election period to the actual polling day and to the extended period of electoral dispute resolutions are considered relevant to the study. It develops methods to gauge the democratic quality of elections in Nigeria.

Acknowledging that the literature on electoral authoritarianism has contributed to explaining democratisation, instead of providing a concise idea of democratic elections, it complicates the subject. For instance, although authoritarian elections are seen as violating key democratic standards (Schedler, 2006), scholars of hybridisation differ as to where the threshold of

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<sup>6</sup> See (Carothers, 2002).

<sup>7</sup> See for example Diamond (2002); Levitsky & Way (2010); Schedler (2002a; 2002b); Gandhi & Lust-Okar (2009); Olufemi (1999); Magaloni (2006).

<sup>8</sup> Hybrid regimes are regimes that combine both authoritarian and democratic elements (Diamond, 2002).



significance is to be drawn. To some, any violation, whether marginal or major that tilted the playing field excludes a regime regardless of its successes. This seems to explain the treatment that Botswana received from Levitsky & Way (2010) despite its long history of freedom from 1969 to 2013 (Bogaards, 2013; FH Report, 2014). Also, any disregard of the basic characteristics of democracy will result in classifying as democratic, regimes which failed to institute procedural integrity which is the safety valve of democratic uncertainty (Schedler, 2006, p.10).<sup>9</sup> And, yet, Schedler was compassionate to label Tanzania as democratic which, for Levitsky & Way, is an autocratic state.<sup>10</sup> Similarly, Sarah Birch insists that for an election to be genuinely democratic, voters must be able to access adequate information and make informed choices about the policy frameworks of all contestants equally (Birch, 2011). This tension explains the description of electoral authoritarianism as a 'familial concept that lacks the unity of members' (Collier & Mahon, 1993 cited in Morse, 2012), and underscores the need for a straightforward notion of democratic elections.

To fill this gap, this thesis builds a comparative case study of the conduct of the 2007 and 2011 general elections in Nigeria, pointing out that a straightforward idea of democratic election, that is case-oriented can move our understanding of democracy, providing contextual explanations of key political terms like participation, competition and legitimacy. Moreover, sensitivity to context has the potential to help scholars develop measures that can be validly applied across diverse settings (Adcock & Collier, 2001, p. 534). Thus, I find Lindberg's conceptions of democratic elections a

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<sup>9</sup> For more about procedural certainty and uncertainty see Mozaffar & Schedler (2002).

<sup>10</sup> Details of this divergence are provided by (Morse, 2012, pp.168-172, Tables 1 and 2).

persuasive start towards a robust empirical understanding of electoral politics, but at the same time, I highlight its inherent weaknesses. Accordingly, I make a case for its revision, making it more empirically focused.<sup>11</sup>

To achieve this objective, this thesis includes insights from democratisation literature and follows Mozaffar & Schedler (2002) in setting electoral governance as an explanatory variable for electoral quality. Electoral governance involves the design and supervision of the entire official framework under which polling and canvassing for voting takes place, including the coordination of all activities from pre-election, through electioneering and polling, to the point when winners are declared and disputes settled (Mozaffar & Schedler, 2002, p.7). However, other scholars have argued that factors such as external support and prior experience with democracy can influence the quality of elections (McCoy and Hartyln, 2009), especially considering that international linkage or influence, the collapse of authoritarian regimes and voter turnout have been found to have a significant correlation with democratisation (Levistky & Way, 2010; Roesser & Howard, 2009; Lindberg, 2006; 2009). However, the analysis of the impact of electoral governance on election quality offers a way to better explain democratisation, establishing the theoretical linkage between elections and democratisation. Besides, explanations about electoral contests demonstrate that political competition requires a sufficiently autonomous and professional electoral

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<sup>11</sup> It is argued that 'proper concepts are needed to formulate a good theory' (Kaplan, 1964, p.53 cited in Adcock & Collier, 2001).

administration and political opponents that are free to campaign, such that each has a fair chance to win (Diamond, 2002; Diamond, 2008).<sup>12</sup>

Equally, scholars of comparative politics are increasingly appreciating that effective electoral cycles are essential for credible elections (Mozaffar & Schedler, 2002; Elklit & Reynolds, 2002; Banducci & Karp, 2003; Mozaffar, 2002). Indeed, electoral processes in pre-, during and post-election periods are central to the validity of any election as a failure in one of the sequences of the electoral cycle could damage the achievements recorded at the previous levels (Schedler, 2002). Also, recent research on democratic elections in Africa highlights the relevance of electoral governance (Bogaards, 2007, 2013; Bratton, 2013; Morse, 2012), indicating that the quality of an electoral contest is institutionally constrained.

Therefore, this thesis brings these insights together and builds a systematic analytical framework for assessing the democratic quality of elections in Nigeria. It argues that a straightforward notion of democratic election when examined from the viewpoint of electoral administration, has the potential to move our understanding of some important political terms like participation, competition, incumbency and the abuse of incumbency, and above all democracy and democratisation. The essence is to understand what makes an election democratic and how the institutional dynamics of electoral governance influence the democratic quality of elections.

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<sup>12</sup> Larry Diamond argued that the basic feature of hybrid regimes is 'lack of an arena of contestation sufficiently open, free and fair so that the ruling party can readily be turned out of power if it is no longer preferred by a pluralist of the electorate' (Diamond, 2002, p. 24).

## *1.2 Why Democratic Quality of Elections?*

Three reasons necessitate the examination of the democratic quality of elections. Firstly, elections have become the most significant part of how democracy is defined. Practitioners either as state or national governments, international organisations or associations, governmental and non-governmental organisations, civil society organisations or political parties at national or international level have emphasised the wisdom of holding periodic multiparty elections. For example, the foundation for any government according to the Universal Declaration of Human Rights (UDHR) shall be the will of the people ‘expressed in periodic and genuine elections [conducted under] universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures’. This is a typical expression of the fact that the authority to govern ought to flow from contested elections conducted at stipulated intervals with a comprehensive equal right to vote. In fact, it is stressed that democratic elections must be ‘periodic at regular intervals, universal suffrage which includes all sectors of society, [built on] equal suffrage [-] in the idea of one-person, one-vote, [based on] the right to stand for public office and contest elections, the rights of all eligible electors to vote, the use of a secret ballot process, ... and that elections should reflect the free expression of the will of the people.’<sup>13</sup>

In accordance with these principles, several commitments to elections and democracy promotion activities were established. Prominent among these efforts are the Norwegian Helsinki Committee, the International Human Rights Group, the Asian Network for Free Elections, the Election Institute of South Africa, the Carter Foundation in the US, and the International Foundation for Electoral

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<sup>13</sup> Article 25 - Universal Declaration of Human Rights (UDHR)

System (IFES). Similarly, numerous intergovernmental organisations such as the International Institute for Democracy and Electoral Assistance (IDEA) in Stockholm, the Commonwealth and the European Union, and the Democracy and Electoral Assistance Units of the African Union (DEAU) are all committed to the conducting of credible elections. Indeed, elections have become a pressing issue to these groups who have to decide, based on evidence, what type of intervention is necessary to foster sustainable democratic development (Norris, 2013; Norris, et al., 2013 cf. Coppedge, et al., 2011).

Secondly, the evaluation of the democratic quality of elections is vital to political scientists and students of comparative politics who are trying to classify regimes. In fact, a significant majority of studies on democracy and democratisation use election results as an important component for regime classification (Cutright, 1963; Cutright & Wiley, 1969; Dahl, 1973; Gastil, 1991; Arat, 1991; Vanhanen, 1990, 1997, 2003 and 2004; Alvarez et al., 1996; Przeworski et al., 1996 and 2002; Beck et al., 2002 as cited in Bogaards, 2007 & Munck & Verkuilen, 2002; Diamond, 2002; Lindberg, 2004 & 2006).<sup>14</sup> For example, Robert Dahl's threshold of political competitiveness in a polyarchy was based on when a political party scored 85% of the votes and was non-competitive when no or only one political party featured as the opposition (Bogaards, 2007, p.1212). Likewise, the most popular regime rating indexes - Freedom House (FH), Polity IV database, the multidimensional index of the Economist Intelligence Unit (EIU), and the recent Ibrahim Index of African Governance (IIAG) – all have some electoral components.

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<sup>14</sup> For details about these indexes see (Bogaards, 2007; Dinneya & Tsegaye, 2004; Munck & Verkuilen, 2002).

Lastly, the examination of the democratic quality of elections is equally important as it is the aspect of democracy that sustains the idea of self-government. This is a position well ingrained in the political thoughts of Dahl (1989), Katz, (1997), Preworski (2010) and Lindberg (2006; 2009). Perhaps what explains the growing attention towards transitional regimes is questioning the incumbent's abilities to devise ways to guarantee success (Zakaria, 1997; Clark, 2000; Schedler, 2002; *cf.* Carothers, 2002; Hartlyn, McCoy, & Mustillo, 2008; Gandhi and Lust-Okar, 2009; Levitsky & Way, 2010; Bratton, 2013; Bogaards, 2013) and the extent to which elections empower voters to make informed policy choices among the existing alternatives (Birch, 2011).

### *1.3 Why Nigeria?*

Like Nigeria's independence in October 1960, the return of civilian rule in May 1999 signalled a beacon of hope for democracy and development for Nigerians and Nigeria's friends abroad. The opening up of the political space plus the economic liberalisation that followed internally provided an impetus for people's need for freedom and economic prosperity. Thus, while the 1999 elections appeared to be fraudulent, most Nigerians including civil society endorsed the elections, supposedly to get rid of the military juntas (Kew, 1999, p. 29). Externally, the international community welcomed the development and decided to accept the elections even before they were held, perhaps assuming this signalled the emergence of a potential leader of democracy and democratisation in the continent. Jimmy Carter was reported to have said 'Africa's most important country was having the most important elections in the world this year' (Kew, 1999, p.29). Thus, the member states of both the Commonwealth of Nations and the European Union ordered that the election be accepted regardless of the flaws (Kelly, 2010, p.166) and the Organisation of Africa Unity (OAU), which has now been replaced by the African Union (AU), was ready to declare it as

free and fair. In other words, there was an apparent readiness to push forwards, internally and externally, for better democratic take-up which left much to be desired in the making of a democratic Nigeria.

Unfortunately, while post-military Nigeria had greater potential for democratic prosperity, the country has been lagging behind in all indices of democracy. Several sources including academic and policy analysts describe Nigeria's democratic failures as being rooted in its inability to design an efficient, effective and politically non-partisan electoral process that reorients the country's political culture to show commitment to the rules governing voter and party registration, candidate eligibility and nomination, election observation, candidate and party access to the media and other resources, tabulation, counting and the declaration of results, as well as the design and operational frameworks of election management bodies and the resolution of electoral disputes rules (Adetula, 2007; Agbaje & Adejumobi, 2006; Ibrahim & Garuba, 2010 & 2009; Junaidu, 2011; Kew, 2004; Lewis, 2003; Reno, 1999; ERC, 2008). Moreover, Nigeria is performing poorly compared to other African countries. For example, in terms of political participation measured by five indicators - free and fairness of executive elections, free and fair elections, political participation, electoral self-determination and effective power to govern – the country ranked 38 in Africa and far below Niger, Liberia and Cote d'Ivoire in the West African sub region (IIAG, 2013).<sup>15</sup> This ranking raises questions of democratic quality in the country and the extent to which it depends on the management of the electoral processes.

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<sup>15</sup> Ibrahim Index of African Governance (IIAG).

Also, Nigeria embodies many of the typical contradictions observed in transitional regimes such as the use of the electoral commission to limit the entry of political opponents, state controlled resources to stay in power, the manipulation rules governing the media and widespread use of electoral fraud.<sup>16</sup>

This research focuses on the electoral legal regime as it relates to the workings of the Nigerian electoral authority in the 2007 and 2011 elections. Here attention is on all the relevant sections that deal with the setting, administration and operations of the electoral commission and its officials, the conduct of the elections and electoral adjudications. It also covers the period of electoral rule applications. Specifically, the thesis emphasises the adequate provision made to ensure equal political participation of all in terms of voter eligibility, openness and competitiveness among contending parties and candidates. Accordingly, the thesis makes an important contribution to the literature on elections and democratisation, in the form of a new case-based empirical study of the impacts of electoral administration on the democratic quality of the 2007 and 2011 general elections in Nigeria.

#### *1.4 Measuring the Democratic Quality of Elections*

Debates over how to measure the integrity of democratic elections differ significantly. This divergence stems from the differences in conceptualisation, measurement and aggregation (Munck & Verkuilen, 2002; Collier & Levitsky, 1997; Coppedge, et al., 2011). To the proceduralists,<sup>17</sup> democracy presupposes an ‘... institutional arrangement for arriving at political decisions in which

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<sup>16</sup> See for instance (Kew, 1999; Popova, 2006).

<sup>17</sup> Also known as the elite centred or Schumpeterian scholars of democracy.



individuals acquire the power to decide by means of a competitive struggle for people's vote' (Schumpeter, 1942, p.242). Accordingly, political parties and elections are the most important institutions. They maintain that a political system is democratic to the degree that its president and parliamentarians are elected in multiparty elections with no confidence in winning by the incumbent party (Cheibub & Przeworski, 1999; Przeworski, Alvarez, Cheibub, & Limongi, 2000). Equally, in a democracy, citizens are offered the chance to participate and regulate power relations in such a way as to maximise the influence of their votes.

While for the substantivists, democracy is '... a political system, one of the characteristics of which is the quality of being completely or almost completely responsible to its citizens' (Dahl, 1973, 1989).<sup>18</sup> Thus, agreed that democracy is a political process in which voters – citizens – must be able to link votes to specific policy options which could simplify the process of making informed choices and subsequently provide a foundation for holding leaders accountable (Birch, 2011). These and other differences make it imperative to have a straightforward definition of democratic elections.

A systematic review of democracy and democratisation literature reveals three basic approaches for assessing the quality of an election. These are the perspective of global norms, liberal democratic perspective and the perspective of quality. For the globalist, elections are accepted as free and fair if they meet certain established international standards and conventions (Donno, 2010; IDEA, 1997; Goodwill-Gill, 2006). However, judging elections using a universal standard has

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<sup>18</sup> Others who have subscribed to this conception include Diamond & Morlino (2005), Bratton (2013), (Collier & Levitsky (1997), and Schmitter & Karl (1991).

some elements of subjectivity and can disregard significant contextual factors that could have far-reaching effects (Bjornlund, 2004). In addition, focusing on these norms contributes less to the development of our understanding of an election's quality as it prevents us from concentrating on issues that seem apparent in the literature.

Scholars of the liberal perspective view an election as democratic when it gives individuals the chance to choose political leaders and its procedures meet three basic requirements (Birch 2011). The first is inclusivity. An inclusive election is one in which all eligible citizens are given an equal right to vote and to be voted for. The second is policy-voting, which requires voters to be able to access all relevant information about candidate policy proposals, evaluate them and determine their own preferences vis-à-vis each candidate. Finally, effective aggregation means that votes cast are given equal weight. That is counting and tabulation must be accurate and based on actual true votes cast (Birch, 2011, p.23). This approach sounds promising, but suffers from empirical weaknesses due to the substantial complexity of the electoral process in many democracies (discussed in detail in Chapter Three).

There are two types of perspective of quality: the perspective of legitimacy and credibility. An election is regarded as legitimate when all relevant partisan stakeholders agree to accept the process and respect its result (Pastor, 1999). This approach has been applauded as it provides a simple and easy way to tackle the complex character of electoral politics (Hartlyn, McCoy, & Mustillo, 2008). However, the utility of this approach is problematic in transitional democracies where defeated oppositions or incumbents may refuse to accept election results regardless of their credibility. For instance, in the 2011 Nigerian presidential elections, the leading opposition

candidates including the CPC presidential candidate, Muhammad Buhari, rejected the results<sup>19</sup> although observers were unanimous that the elections were credible.

Another perspective on quality is that a democratic election is one whose procedural fairness and technical soundness has been certified by independent, non-partisan and informed election observers. The argument is:

If the basic elements for procedural fairness and technical soundness are present to an important degree, then the election is deemed acceptable. If the process is deemed by observers to be egregiously deficient procedurally or technically, or sufficiently deficient to prevent the election results from reflecting the will of the voters freely expressed at the ballot box, the election is unacceptable. The intermediate category of flawed is reserved for elections in which the process experienced significant procedural or technical deficiencies (whether due to incompetence, abuse of state resources or power or other extra-legal resources, fraud, or violence), but these are not clearly sufficient to affect the outcome of the voting ... (Hartlyn, McCoy, & Mustillo, 2008, p. 77).

Yet in societies where distrust is high and political elites seem to lack the basic principles of democracy, using partisan judgement or judgement from a restricted non-partisan observation alone could lead to faulty conclusions about integrity. In fact, making judgements about electoral integrity based on observer reports alone runs the risk of being infected by their prior biases.<sup>20</sup> Hence, in order to examine the democratic quality of elections without prejudice, scholars must design a systematic framework that ties the democratic quality of elections to effective electoral administration. To achieve this objective, Mozaffar and Schedler (2002) provide four approaches: comprehensive, selective, subjective and indirect to the study of electoral administration.

The comprehensive approach pays attention to the extent to which an election is free from irregularities at any point in the entire electoral cycle. Thus, scholars using this method developed

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<sup>19</sup> (Vanguard. April 19, 2011).

<sup>20</sup> (Dorman, 2006; Kelly J. , 2010).

a checklist of electoral activities from pre-election to post-election periods. For example, Elklit and Reynolds had 12 steps, with 47 elements which they modified to 11 steps with 54 elements. Their argument is that a systematic study of elections using electoral governance as an explanatory variable should cover these important elements which commence from the appointment procedures of election officials to the point when results are declared. They contend that the quality of an election is in the extent to which experts and experienced observers see the entire electoral process as legitimate and binding (Elklit & Reynolds, 2002 & 2005). In other words, a highly democratic election is one in which all or the majority of the experts and experienced observers consulted are satisfied with the soundness of the entire electoral processes organised into the above 12 steps. However, the problem of the checklist approach is that it fails to provide in anyway ‘how to weight each item on the list [or] a formula to aggregate the answers’ (Mozaffar & Schedler, 2002) and therefore, ‘implementation becomes burdensome, too costly, and ultimately unsustainable’ (Bland, Green, & Moore, 2013). In addition, the inherent weaknesses of the approach become more visible at the data collection level. Judith Kelly & Kiril Kolev, for instance, admitted this challenge in their effort to develop a Dataset on International Election Monitoring (Kelley & Kolev, 2010).

The selective approach restricts the analysis of electoral quality on specific aspects of electoral governance. On this ground, many studies were conducted, among which there are a series of efforts to explain how to detect and mitigate electoral frauds and malpractices in new democracies (Calingaert, 2006; Fabric, 2003; Lopez-Pintor, 2010; Darholf, 2011; Vickery & Shein, 2012). Others have concentrated on the operational quality of election management bodies, the media and election resolution mechanisms (Banducci & Karp, 2003; Debrah, 2011; Eisenstadt, 2002;

Stewart, 2006; Kwarteng, 2014; Popova, 2006; Gazibo, 2006). However, the majority of these efforts did not examine democratic quality in relation to electoral governance. Instead, their intention was to indicate the effects of factors like power dynamics on the autonomy of electoral commissions and electoral courts' behaviour, therefore leaving out some important aspects of elections that explain a lot about regimes.

The subjective approach is similar to the first category which analyses election quality from the perspective of legitimacy. This perspective views elections as flawed when some or all major political parties refuse to either participate in an election or reject its results (Pastor, 1999). However, such a standard is vulnerable to manipulation by weak parties that are unable to compete effectively and defeated candidates. As discussed in Chapter 5, Nigerian parties competing at the state level tend to reject electoral defeats but accept elections as free and fair when they have won.

The last approach is the indirect approach, which is also similar to some measures of democracy discussed at the beginning of this chapter. The approach only bases conclusions upon election results. The argument is that it is difficult to substantiate claims of fraud, intimidation and electoral malpractice (Przewoski, Micheal, Antonio, & Fernando, 2000). Thus, elections can only be regarded as democratic if they allow for the alternation of the incumbents in power (Geddes, 1999, p. 116). Yet the question remains, how then do we ensure that elections have met the basic requirements of democratic elections?

In response to this question, Gary Bland, Andrew Green and Toby Moore developed a refined tool for measuring the quality of elections called the Election Administration System Index (EASI).<sup>21</sup> The index is a ‘multi-dimensional, readily applicable tool for quantifying the quality of an election process over the life of the electoral cycle’ in the developing world. It is built upon the selective and subjective approaches discussed above and utilises expert surveys administered through an online research tool to be completed by country and international specialists. The argument is that ‘[a]ny functioning election system produces independent, non-partisan specialists at home and abroad who have a breadth and depth of expertise about where the trouble spots lie within that system’ (Bland, Green, & Moore, 2013, p. 366). This is a valuable index as it captures the most critical aspects of elections and electoral administration. However, the fact that EASI has a restricted five-point Likert scale of responses denies us the potential to mine a large amount of data. This is a lamentable weakness considering that Bland et al. envisaged the possibility of using their findings to inform policy directions and comparative studies. Perhaps, that might inform their decision to envision the use of qualitative data from election observer reports and other sources to supplement their data sources.

What is obvious from the foregoing, as Bland et al. (2013) put it and with which I agree, is that elections dominate discussions about democracy and development among scholars, practitioners and policy-makers. This is despite the fact that democracy is by far more than elections. In addition, it indicates that there are various methods and perspectives offered to consciously or unconsciously measure the democratic quality of elections. Therefore, I agree with the use of

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<sup>21</sup> For more about this index see [RTI.org/EASI](http://RTI.org/EASI).

selective and subjective approaches in measuring the democratic quality of elections on the account of the nature of the problem and its purposes. Furthermore, both approaches limit areas of concern and help the researcher to remain focused. Also, the selective approach provides an opportunity to focus on the specific issues that are most critical to the entire electoral cycle. In short, the two approaches ease the process of data collection and enhance data validity and reliability. Thus, this indicates that some of these approaches provide a valid way of explaining the democratic quality of elections. In fact, and as I shall demonstrate later, some of these definitions provide various indicators which I treat as explanatory variables. Thus, while I agree that democratic elections have to be participatory, competitive and perceived as legitimate, we cannot build judgements of elections quality on election results alone. On the other hand, I contend that there is a need to extend our conception of credible elections to include some subjective measures such as those that consider issues like fraud, repression, the impartiality of either the electoral commission and its staff or the security officials on election duty and how such acts of electoral malpractice are adjudicated and resolved. This enhances the analytical utility of my framework.

The above indicates that studies of elections quality are usually based on data sourced from various accounts.<sup>22</sup> Existing efforts on Nigeria follow a similar pattern, with some scholars using

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<sup>22</sup> For example, Pastor, proposed the use of the views all relevant partisan stakeholders (Pastor, 1999). Similarly, for scholars have used the independent viewpoints of nonpartisan and informed electoral observers alone to judge the quality of an election (see in particular Hartlyn, McCoy, & Mustillo, 2008). Other scholars have used popular perception alone to determine the integrity of elections in different parts of the globe (Birch, 2008 & 2010; Rosa, 2010 etc). Likewise, there are some who emphasize the utility of the opinion of a country's election experts on core features of recent nationwide elections (Bland, Green, & Moore, 2013; Norris, Frank, & Coma, 2013).

subjective sources, and others trusting more objective ones.<sup>23</sup> These methods prevent the possibility of a thick and valid interpretation of electoral politics in the country,<sup>24</sup> highlighting the need for new approaches to data collection. Thus, we need methods that combine the very character of electoral politics – the tendency of having partisan and nonpartisan actors with objective and subjective views.

To achieve these requirements, I choose a multiple approach to data sources. Data on both the dependent variable and the explanatory variable are achieved from diverse sources. These include elections results and election survey data sets, in-depth interviews with both partisan and nonpartisan electoral stakeholders, interviews conducted by media outlets or other organisations, field election reports compiled by the Nigerian Electoral Commission and the independent election observers (at least two from each side of the domestic and foreign missions), speeches and media reportage of all electoral activities in the country, courts and electoral tribunals rulings and other legal documents, newspapers, magazines and other related sources particularly on the conduct of the 2007 and the 2011 elections. In addition, I use several secondary sources including monographs, edited volumes and published articles (chapter three elaborates this in more detail).

This approach provides me with exceptional positionality and enhances the strength of the study, reinforcing its inferences. Moreover, consistency is an important factor that collaborates data and

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<sup>23</sup> Some of the few that could be regarded as a comprehensive studies of elections quality in the country are Ibrahim & Garuba, 2009 and 2010. Others that concentrate on peculiar issues or specific elections include (Adetula, 2007; Agbaje & Adejumobi, 2006; Akhaine, 2011; Chukwu, 2007; Hoffmann, 2010; Junaidu, 2011; Kew, 2004; Lewis 2003; Omotola, 2007, Tar & Zack-Williams, 2007). Bratton (2013) and Kerr (2013) in particular concentrate on popular perception based on a survey by Afrobarometer in order to examine elections quality in the country and only Festus Iyayi (2007) seem to examine elections from historical and achievement narratives.

<sup>24</sup> This is a position well discouraged by students of African studies (Mahmood, 1990).



substantiates claims in political science.<sup>25</sup> Thus, I triangulate the sources, making sure that evidence supports arguments and conclusions are based on facts.<sup>26</sup>

Each political research has its own limitations, my experience is not an exception. Thus, at each stage of the study, I have tried to be as explicit about such biases and limitations as possible. One possible limitation was, the danger of considering too many variables and a small number of cases.<sup>27</sup> This was addressed through the subjective and selective approaches discussed above. The research also faced the danger of a lopsided sample of interview respondents as the incumbent party appears not to be adequately covered. However, other sources complement this disparity. This is discussed in detail in chapter three, which explains how the gap was to an extent covered. Finally, the use of other sources especially election observer reports imposes its own set of limitations.<sup>28</sup> But the triangulation of the sources has significantly reduced these tendencies. The relevance of election observers in revealing the strengths and weaknesses of an election is well acknowledged.<sup>29</sup> In all, these multiple sources situated the thesis to rely on thick accounts of the conduct of the elections.

### *1.5 Purposes, Questions and Objectives*

The main purpose of this study is to understand what makes an election democratic and to what extent the quality of elections in Nigeria depends on electoral governance. Drawing from the

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<sup>25</sup> See for example Adcock & Collier (2001) and Pierce (2008).

<sup>26</sup> A good research, scholars argued, provides a convincing methodological trail to substantiate findings (Bryman, 2008; Lillis 1999; Ritchie, Lewis & Elam, 2012).

<sup>27</sup> For detail about this see for instance Lijphart (1971) and Stake (2010). This I did using the selective and subjective approaches (Mozaffar & Schedler, 2002).

<sup>28</sup> See for example Dorman (2006); Kelly (2010); Kew (1999) for details about election observer biases.

<sup>29</sup> See chapter three the subsection on data collection.

perspective of the procedural conception of democracy, this research explores the effects of governance on the electoral process as the determinant variable in understanding the quality of democratic elections. In short, this thesis seeks to complement existing efforts at explaining a seemingly neglected aspect of democracy and democratisation – the democratic quality of elections – by posing the following questions:

1. How can we measure the democratic quality of elections or ‘election integrity’ in Nigeria?
2. To what extent, if any, does electoral governance influence the democratic quality of elections in Nigeria?

In particular, the thesis analyses the questions:

- a. Does the autonomy of the electoral commission in Nigeria impact on the democratic quality of elections?
- b. To what extent do the basic components of the electoral cycle in Nigeria influence the quality of electoral contests?
- c. How essential is the influence of effective electoral dispute resolution to the democratic quality of elections in Nigeria?

Data collection regarding these issues remains a serious challenge in Nigeria due to prolonged military rule. However, the survival of democratic rule since 1999 has created the possibility for greater academic engagement. Electoral legislation, electoral cycles (both planning and implementations) and electoral adjudication are more open for empirical examination. The Nigerian electoral commission has established an institute which maintains a repository of

electoral data from the legislative background of the electoral laws to the implementation of the electoral cycle and the actual voting results. Similarly, The Commission has upgraded its webpage through which it makes available relevant information. In addition, the Nigerian legislature and judiciary have made available amendments to the electoral laws and judgements pertaining to electoral law on their respective webpages. Also, individual stakeholders, whether as political parties, individual candidates or civil society activists, are increasingly using social media to report and comment on electoral matters. Thus, electoral data in Nigeria has escaped from the tradition of being kept under lock and key.

### *1.6 The Structure of the Thesis*

In the remainder of the thesis, Chapter Two describes the Nigerian state as the political pitch of electoral contests. Using the insights from literature, I highlight the relevance of demographic, political and institutional factors in structuring the behaviour of political actors – political parties, incumbents, candidates, voters and electoral officials. Looking at key elements such as inaccurate voter lists which stem from the absence of exact census figures, poor living conditions, ethno-religious divisions, and party and federal systems in operation, the chapter establishes that understanding these complexities has the potential to explain the democratic quality of elections in the country.

Chapter Three addresses the question of how to develop a methodology and gauge the democratic quality of elections in Nigeria. It begins with a discussion on the democratic quality and situates the concept of electoral quality within the prevailing conceptions of democracy. A discussion of case selection follows, building the study within its domain of interests. Further, the chapter

operationalises the democratic quality of elections, reviewing some major attempts at explaining what constitutes democratic elections by Lindberg (2006), Levitsky & Way (2010) and Birch (2011). I then examine the significance of electoral governance in explaining the quality of elections in qualitative and quantitative terms. Qualitatively, a democratic election is participatory when it provides equal voter suffrage, is prepared using a genuine voter list, adequate registration and election materials are provided, and when the electoral process is free from fraud, repression or intimidation. It is also participatory when people's right to participation either as voters or candidates is safeguarded without discrimination. In addition, the chapter adds a quantitative score for effective participation which is gauged using either the continental average or a country score equal to 1. In other words, a participatory election has two basic qualities: qualitative and quantitative. Failure in qualitative measures, even if the quantitative measure is 1, is not accepted. Similarly, a democratic election has to be competitive, i.e. the election has to pass the test of quality and quantity. In short, I propose a three-way hypothesis - of an autonomous electoral commission, a well organised electoral cycle and a better mechanism of electoral dispute resolutions – which are independent of democratic elections. This is followed by an examination of the data collection methods, data analysis as well as the validity and reliability of the entire design. Also included is a discussion of some of the ethical limitations of the study.

Using this framework, Chapter Four empirically examines the relationship between the autonomy of the electoral commission and the conducting of democratic elections. It reveals that although the literature highlights the structural independence of electoral management bodies (EMBs), the effectiveness of these institutions in Nigeria largely depends on their autonomy from the incumbent in terms of operational powers and functions, as well as financial and institutional

capabilities. Second, the chapter shows that institutional factors appear to exert and provide useful explanations for many electoral failures than other factors like leadership, patriotism, the commitment of other groups or garrison-godfather politics.

Chapter Five further elaborates the argument that independent electoral governance is necessary for the democratic quality of elections. It emphasises the importance of each step in the electoral cycle from planning to implementation. Exploring the perspectives of election observers, interview respondents and Nigerians the chapter establishes that the administration of elections has an impact on electoral integrity as expected in the literature. Well prepared and efficiently managed electoral processes explain the successes of the 2011 elections and their absence in the failed 2007 elections. Indeed, the chapter indicates that despite the fear expressed in the literature that election observers do approach elections with a ‘pre-election stance’ (Kelly, 2010; 2012; Cathores, 1997; Dorman, 2005), there is a element of reliability in election observer reports as other sources corroborate their viewpoints.

Chapter Six concentrates on how electoral courts and tribunals are equally indispensable to strengthening the democratic quality of elections in Nigeria. Analysing the efficiency of electoral courts and tribunals in respect to the timeliness of proceedings, the openness and impartiality of arbiters, and the burden of proof and standards of evidence, I argue that in societies where the abuse of incumbency is omnipresent, the electoral instruments of political competition and participation require impartial arbitration. This argument is grounded in the view that the settling of electoral disputes is pivotal to electoral integrity (Taagepera, 1998; Mozaffar & Schedler, 2002; Eisenstadt, 2002). Indeed, such rule adjudication in Nigeria has reinstated the people’s right to

decide their leaders. In both the 2007 and 2011 elections the courts nullified or ordered some elections to be rerun which had significantly violated electoral laws. Also, the courts have ensured that unconstitutional exclusions in the polls, especially in 2007, were reversed.

The conclusion summarises the study's main findings. It shows that while Nigeria has had a checkered electoral past, the story of electoral competition and participation is incomplete when restricted to ethnic and economic variables only. Certainly, it will take time to remove money or ethnic influence in elections, however, credible elections in Nigeria, though dependent on ethnic affiliation and individual partisanship, are indispensable to efficient electoral cycles and shortcomings even if one step of the sequence or link of the chain of the electoral cycle can undermine the democratic quality of elections. Similarly, in Nigeria where the abuse of executive powers is pervasive, all governmental institutions of political competition and participation require sound electoral dispute resolutions so as to deter potential offenders. The chapter further provides some explanations that relate the theory of democratisation by election and the relevance of electoral studies to the understanding of hybrid and competitive authoritarianism.

## *Chapter 2 The Electoral Terrain*

Voting does not amount to choosing in Nigeria as electoral mandates are, arguably, made by political elites outside electoral norms, rules and procedures (Ake, 2000). Efforts at reversing this practice and restoring public confidence have been rather mixed. Among the commonly identified challenges are the character of the Nigerian state as the arena of the electoral contest, weak democratic institutions and processes, undemocratic political culture and a fragile constitutional framework that impedes the proper workings of the electoral management body (ERC, 2008). This chapter examines the character of the Nigerian state as the arena of political contest. I examine how the Nigerian electoral topography constrains or empowers partisan and non-partisan political actors – political parties, candidates, voters, electoral officials – and might ultimately influence the quality of elections.

This chapter is an attempt to explore the potential effects of contextual factors on democratic elections. This is essential to my research objectives as understanding the context will help to explain some of the difficulties facing the country in conducting free and fair elections. Three factors of demographic/cultural context, the political background and the institutional settings appeared the most relevant from the literature on democratisation in Africa and Nigeria in particular (Conteh-Morgan, 1997, 1997; Elischer, 2013; Ibrahim, 1997; Kew, 2004; Lewis, 2003; Mozaffar, 2002; Osaghae, 1998; Paden, 2004; Suberu, 2004). The cumulative effect of these factors is significant to our understanding of Nigerian electoral settings and forms the basis of subsequent discussions. The following is an examination of the trajectories of electoral administration in the country. Next is the description of the political background of the dominant-power politics that characterised the 2007 and the 2011 elections.

## 2.1 The Demography

The Nigerian demographic setting poses several prominent challenges to the administration of credible elections. Firstly, while the contemporary geographical landmass called Nigeria is home to 140,431,790 million officially recognised people,<sup>1</sup> this figure remains a subject of debate among its inhabitants. To some scholars and observers, data from 40 years ago (1963) looks more reliable (Mustapha, 2006; Joseph, 1995) than more recent attempts, including the 2006 census figure (Bamgbose, 2009). As a result, government statistical information in use is arguably based on estimates. This lack of accurate data has affected the administration of elections in the country since its inception. In fact, from the 1959 general elections to the last in 2011, each electoral commission has to conduct fresh voter registration exercises (Table 2.1).

*Table 2.1 Phases of Postcolonial Elections in Nigeria*

<b>Elections</b>	<b>Registered Voters</b>
1959	9,043,404 <sup>a</sup>
1964/65	-
1979	48,633,782 <sup>f</sup>
1983	65,304,818 <sup>b</sup>
1992/93	38,866,336 <sup>g</sup>
1999	57,938,945 <sup>h</sup>
2003	60,823,022 <sup>c</sup>
2007	61,567,036 <sup>d</sup>
2011	73,523,040 <sup>e</sup>

*Sources:* a) Bendel, (1999, p.704) but there is a conflicting figure in Junaidu, (2011, p.148); b) Bendel, (1999, p. 704) & Junaidu, (2011, p.148); c) African Election Database, (2011) & Junaidu, (2011, p.148); d) INEC, (2007, p. 26)<sup>1</sup>; e) NDI, (2012, p.7); EUEOM, (2011, p.2); and INEC, (2011, p.4); f) Bendel, (1999, p.704); g) Bendel, (1999, pp.704-720); and h) African Election Database, (2011).

Politicians appear to make use of this inaccuracy and manipulate each registration exercise to ensure success. It is said that the national voter register has been an object of manipulation by

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<sup>1</sup> Figure sourced from [National Population Commission](#).



incumbent parties and candidates and a major component of election rigging (Agbaje & Adejumobi, 2006; Lewis, 2003; Junaidu, 1997).

A possible explanation for the absence of a traceable record of the electoral voter list in the 1964/65 elections is the extent of the manipulation of the record in the western and mid-western regions (Table 2.1). For other elections where records are available, analysts are suspicious about the reliability of the records as incumbents deliberately inflated the figures (Lewis, 2003). According to Darren Kew in the 2003 elections ‘... somehow, the numbers of the registered voters were bursting at polling stations across the nation, implausibly so for the rural districts in which I observed’ (Kew, 2004, p. 149). We can infer that the surge which Kew referred to could have also occurred in previous elections. Consider, for example, the 65.3 million declared registered voters by the Federal Electoral Commission (FEDECO) during the 1983 general elections. This figure seems inflated as 20 years after that the INEC could barely register 60 million eligible voters and this is inclusive of the dubious records which Kew expressed his doubts about. Equally, although the 2007 voter registration exercise had its own forms of contaminations, INEC was still only able to register 61.5 million eligible voters. It could be argued that the 1983 registration exercise was more accurate when compared to 2007 as the latter had clear evidence of fake voters. However, a critical look at the two subsequent exercises (1992/93 and 1999) and the last one (2011) seem to complement the conclusion that:

.... the general election was anything but free and fair. The only political parties that could complain of election rigging are those parties that lack the resources to rig. There is ample evidence that rigging [and] thuggery were relative to the resources available to the parties.<sup>2</sup>

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<sup>2</sup> Excerpts from the Maiden National Broadcast by the Head of State and Commander-in-Chief of the Armed Forces, Major General Buhari on the 1<sup>st</sup> of October 1984 from (Usman, 2002, p. 93).

Similarly, inaccurate national voter lists have the effect of diverting the attention and resources of electoral commissions away from the election proper. Often the challenge of registering voters who are scattered in the remote areas distracts successive electoral commissions at the expense of other electoral arrangements. For example, in the 2003 elections INEC was logistically constrained to the extent that it failed to provide

... compartments for thumb printing [which] undermined the secrecy of the vote and exposed the voter to the machinations of those that would have preferred “community voting” [and INEC] did not make adequate arrangements for the transportation of sensitive election materials to polling stations and to collation centres. [Consequently,] result sheets disappeared and re-appeared in different forms at collation centres (TMG, 2003, p.120).

Perhaps the observed dependence of INEC on the states and local governments for election logistics (FGN, 1991; ERC, 2008; Kew, 2004) may be due to overconcentration on voter registration during every election. Consequently, key electoral field officers including Resident Electoral Commissioners (RECs) are left at the mercy of politicians, i.e. state governors, local government chairmen, members of local government councils, state and federal legislatures and other partisan actors.

This absence of an accurate national voter list has disenfranchised the electors. For example, it was reported that an ‘... entire neighbourhood presumed to be opposition strongholds showed up on election day (2003 elections) to find that their members had been disqualified or not registered’ (Kew, 2004, p. 149). This practice, as indicated in Chapter Five, has negative effects on the credibility and legitimacy of the electoral commission and the election result. It might be the reason behind the current electoral mandate protection slogan: ‘vote, protect it, escort and wait there for the declaration’ (*a kasa, a tsare, a jefa, a raka*) which has become popular since the 2007 general elections.

*Table 2.2 Nigeria's Population 1952 & 2006*

<b>Region</b>	<b>Total Population 1952<sup>(a)</sup></b>	<b>Total Population 2006<sup>(b)</sup></b>	<b>% Total Nat Pop 1952</b>	<b>% Total Nat Pop 2006</b>
North	16,835,582	75,239,722	55.4	53.6
West	6,352,472	27,722,432	20.9	19.7
East	7,215,251	37,475,636	23.7	26.7
Total	30,402,205	140,437,790		

*Source:* (a) Ostein, (2012, p.5) and (b) National Population Commission NPC, (2006)

Also, religious and regional divisions are obvious in Nigerian politics. Nigeria is composed of numerous nationalities that have lived for 54 years using a single ‘official language’ but remain ethno-religiously distinct (Lewis, 2007; Osaghae & Suberu, 2005; Obiyan & Amuwo, 2013). Controversies aside, Nigerian geopolitical configuration is divided unequally into three major tribal groups (Oyovbaire, 1983). The densely populated Hausa/Fulani ethnic group in the north, and the Yoruba and Ibo who each dominated western and eastern regions respectively. In fact, as far back as the 1952 population census, the north had more than half (55.4%) of the national population, while the east and west each had less than a quarter (20.9% and 23.7% respectively). The same pattern is replicated by the 2006 population census which showcases the north as having 53.6%, with the west having less than a quarter (19.7%) and the east with slightly more than a quarter (26.7%) of the national population (Table 2.2). In addition, each of these majority groups has dominated a reasonable portion of other minority populations in each region (Suberu, 2007).

In addition, Nigeria is ‘... the largest country in the world that is about half Muslim and half Christian’ (Paden, 2012, p.13). According to the available records, the country is made up of 50.2% Muslims and 48.5% Christians of the national population (National Population Commission,

2004).<sup>3</sup> This division provided the politicians with a population that could easily be targeted for political ends. Accordingly, ethnicity and religion regularly take the centre stage in the country's politics. For example, during each round of elections the elites nurture ethno-religious sentiments to ensure success. Hence, we find expressions like 'southern Christian incumbent facing off a northern Muslim challenger' (Paden, 2012, p.3) used to label presidential party tickets. The Obasanjo/Atiku, Yar'adua/Jonathan, and Jonathan/Namadi presidential tickets in the 2003, 2007 and 2011 elections were described as Christian/Muslim and Muslim/Christian tickets respectively (Ayantayo, 2009).

Likewise, during electioneering political parties use religious sentiments to build support. For example, during the 1999 elections, Obasanjo was portrayed as 'born again' in Abacha's prison camp and a blessing to Nigeria (Obiyan & Amuwo, 2013). In fact, for some scholars, the genesis of Nigerian political crises lie in the actual and potential use of ethno-religious differences as instruments of competitive political mobilisation, legitimisation and representation (Suberu, 1997; Mustapha, 2006; Kifordu, 2011). Consequently, the administration of elections, according to a former national chair of the electoral commission, is dragged into pre-existing sentiments to the extent that 'if one village or clan [is] in conflict with another and got hold of election materials because a son of the soil happened to be an election officer, every trick in the book [is] employed to deprive rival[s] of equal access' (Eme, 1997, pp.137-138).

Lastly, a large percentage of Nigerians are severely impoverished and most live in remote rural areas. According to a recent report, the United Nations Development Programme (UNDP) placed

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<sup>3</sup> Population Reference Bureau and the World Fact book.

57.3% of Nigeria's population as living under severe deprivation and 54.1% under multi-dimensional poverty, with each surviving on less than 1.25 US dollars per day.<sup>4</sup> It is said that a hungry, malnourished and poor population is easy prey for elites' manipulations (Magaloni, 2006). Thus, for example, it was reported that in the 2007 elections '... powerful figures calculated their best interests and shif[t]ed their factional alignments ... [and] tremendous amounts of largesse change[d] hands' (cf. Sklar, Onwudiwe, 2006). In the context of such gripping poverty, vote buying was found to have enhanced partisan loyalty among rural Nigerians (Bratton, 2013) and creates what scholarship called a 'tragic brilliance'. A tragic brilliance is when the electorates' choices are constrained by other circumstantial conditions to the extent that they are denied the ability to exercise their right to free choices (Gandhi & Lust-Okar, 2009). Also, the poor conditions of people including those recruited to serve as electoral officials make them vulnerable to elite manipulation unless they are sufficiently paid by the electoral commission. The demographic features enumerated here have and continue to inhibit appropriate democratic tradition in the country and remain some of the basic challenges to the administration of democratic elections in the country.

## *2.2 The Political Context*

The recognised characteristic of the Nigerian political system is that of neo-patrimonialism which is a system based on the state monopoly of power and resources (Bratton & van de Walle, 1997). This political set up makes it possible for partisan political actors to use state resources to their advantage. Before independence, the British through their conflicting policies had nurtured on the

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<sup>4</sup> [Human Development Reports](#).

one hand a polity based on ethnic and religious divisions and on the other a disintegrated state that spent 54 years staggering in search of unity in diversity (Agbaje, 1997; Adejumobi, 1997). This was done despite noticeable elements of democratic traditions and possibilities for unity among the precolonial societies. Constitutions were fashioned to run colonial Nigeria but not in accordance with the prevailing understanding of self-government in London (Osaghae, 1998; Kirk-Greene, 1997). Thus, when provision for the election of Nigerians to the legislative council in the 1922 Constitution was made, it was confined to the municipal areas of Lagos and Calabar (Kirk-Greene, 1997; Agbaje, 1997) and only four – three for Lagos and one for Calabar – out of 46 council seats were made available to male residents of 21 years of age with a minimum income of £100 – £120 per annum (Osaghae, 1997; Diamond, Kirk-Greene, & Oyediran, 1997; Iyayi, 2007 & ERC, 2008). Also, the 1946 Constitution did not provide any considerable changes as participation remained restricted to the elite or only open to people with £50 per annum or politicians with records of achievement – defined as people with ‘... western education, first hand exposure to Euro-American ways of life as former slaves, wealth or a combination of these’ (Agbaje, 1997, p.368). In other words, the political party system was only opened to political elites as few Nigerians fulfilled the set criteria. From the inception, therefore, political parties were fashioned to be ‘vote gathering associations of the privileged classes, for the privileged classes by the privileged classes ... [and the colonial electoral process] did not give the nascent parties the incentive to make direct contact with the mass people’ (Agbaje, 1997, pp.368-373).

In addition, because strong personalities<sup>5</sup> were made to combine party leadership with leadership of ethnic, religious and regional ideas, political parties of the first republic were fostered on the art of electoral rigging against fair competition. For example, it is alleged that the British participated in the manipulation of the 1959 elections ‘even in areas where (the supporters of the party favoured by the British) were in a minority’ (Iyayi, 2007, p. 3). Thus, ‘ethnicity became the crucial vehicle of political mobilisation. Personalities and clientele networks predominate; internal discipline is weak; internecine battles are common’ (Lewis, 2003, p.134). Accordingly, the very person or group of persons who are the major beneficiaries of free and fair elections turn out to be the leading impediments of democratic elections (Olagunju, Jinaidu, & Oyovbaire, 1993).

This political arrangement provided politicians with a great advantage in shaping electoral outcomes in the country. Politicians use political parties to connect to state resources and build political loyalty. Such political advantage provides incumbents with a chance to ‘... outspend on campaigns, deploy legions of canvassers, and, most importantly to supplement policy appeals with patronage goods that bias the voter in their favour’ (Greene, 2007, p. 5). For example a party chief described his party as ‘a winning machine where we win elections without winning the hearts of the people’ (Channel Television, 19<sup>th</sup> January 2011 @ 10:13pm). Similarly, former president Obasanjo explained that ‘parties and candidates together spent during the [2003] elections more than [is required] to fight a successful war’ (FGN, 2005, p.5). Perhaps, this explains why the ruling

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<sup>5</sup> Strong personalities refers to people that have either traditional and charismatic authority or western perceived legal influence of authority (see for example Paden, 1986; Tukur, 1999).

People's Democratic Party (PDP) is '... full of members who fraudulently obtained their party membership cards'<sup>6</sup> and at a point the party dismissed all its members to literally enjoy the privilege of being the only '... ruling party in world history without a single member' (Ibrahim & Garuba, 2010, p. 20).

Also, the political environment makes it easy for elites to use state power and resources to win by establishing patron-client relations regardless of the cost. For instance, Lindsay Berrett observed that by 2006 it is obvious that:

Obasanjo was building the party's future on his personal political preference." He seemed to be saying that "the real dividends of democracy were to be gained from heeding his own decisions rather than from depending on the choice of the people since those whom he regarded as his best collaborators were those whom he had personally handpicked to serve without any political linkage between them and the elective process (Isumonah, 2012, p. 52).

In other words, for the PDP '... all known rules of democracy [are to be] thwarted. The party does not care a hoot about the processes of elections or selection, it violates them at will' (Agbaje & Adejumobi, 2006, p. 36). That is, for the PDP, the decision over who is to occupy what position of authority on the exclusive list of the president and those around him (Iliffe, 2011).<sup>7</sup> In other words, 'the public domain is the sole property of rulers and that it is theirs to control as they please' (Ekeh, 1997, p. 90). Elites dispense patronage to intimidate opponents and suppress the popular view; therefore political parties became 'vehicles for the expression and exercise of conflicts over the control of power' (Ibrahim & Garuba, 2010, p. 21).

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<sup>6</sup> Nigeria Tribune, Nov. 23<sup>rd</sup>, 2005.

<sup>7</sup> The chapter 20 in Part V of this book provides an empirical explanation of Obasanjo's imperial tendencies.



Presumably, these were some of the reasons behind the inability of the opposition to dislodge incumbents.

*Table 2.3 Incumbency Rate 1959 - 2011*

<b>Election</b>	<b>Wining Party</b>	<b>Main Opposition</b>
1959	NPC/NCNC	AG,
1964	NPC	AG/NCNC
1979	NPN	UPN & NPP
1983	NPN	UPN & NPP
1999	PDP	APP & AD
2003	PDP	ANPP & APGA
2007	PDP	ANPP & AC
2011	PDP	CPC, ACN & ANPP

*Source:* Author's compilation

For example, Table 2.3 indicates that the NPC remained in power until some military officers staged the coup that killed the most prominent politicians from the north on 16th January 1966. Similary, the ruling NPN remained the winner of the 1979 and 1983 elections respectively just as the PDP has remained in power since 1999.

Therefore, in the Nigerian political context, many ‘...candidates vie for office for the privilege of acting as intermediaries in patron-client relations ... and the incumbent manipulate [the process] to ensure their prolonged rule’ or their favoured candidate wins (Gandhi & Lust-Okar, 2009, p. 407). However, it can be argued that the ruling elites are not alone in their attempt to manipulate the elections as they do so in collaboration with the citizenry. For instance, it is the electorates who apparently inflate the voter register while acting as registration officers, whose houses are used as venues for the illegal thumb printing of ballot papers, who as returning officers alter election results and deliver the same (the result) to collation centres, and who are used as the political thugs to intimidate their opponents (FGN, 1991; Olagunju, Jinaidu, & Oyovbaire, 1993). While this is

going on, the parties and candidates always have their own grand designs. Actually, and as Obasanjo rightly pointed out politicians in Nigeria

prepare for elections as if [they] are going to war, and I can state without hesitation, drawing from my previous life [experience], that the parties and candidates together spent during the last elections [2003] more than would have been needed to fight a successful war (FGN, 2005, p.5).

In short, the political context provides politicians - incumbents and the opposition, especially the former with a fertile environment in which to manipulate electoral behaviour, processes and outcomes. This corruption has rendered the electorates vulnerable to the mercy of fragile political parties that seem disconnected from their constituencies who only interact with the electorate during elections.

### *2.3 The Institutional Setting*

Having gained independence on the 1<sup>st</sup> of October 1960, Nigeria is a federal republic of 36 states in addition to a Federal Capital Territory and is comprised of 774 local governments. The country operates a bicameral legislature with 109 senatorial districts and 360 federal constituencies. Each district and constituency is represented by an elected member who serves tenure of 4 years. The president and governors are elected as executives for a period of 4 years each with a chance of one second term. In terms of electoral administration, this composite whole is administered by one Chairperson, 12 National Commissioners and a Secretary in Abuja. The Commission is represented at state level by 37 residential electoral commissioners, 774 electoral officers and at least 3 polling staff per unit. Presently, Nigeria has 8,800 functional registration areas and 111,119 polling units (INEC, 2011).

This organisational structure has passed through nine structural models in search of a viable 'federal democracy' which is a structural arrangement that gives constituent units substantial power to operate as independent parts of a central government.<sup>8</sup> The first two northern and southern protectorates were established when Nigeria was under colonial rule; these were later changed to three (north, west and eastern) regions. They were seen as independent federating units between 1914 and 1954 (Paden, 2004). However, it is difficult to see them as satisfying K. C. Wheare's notion of coordinate and independent federating units. According to Wheare, federalism is that 'method of dividing powers so that the general and regional governments are each, within a sphere, coordinated and independent' (Wheare, 1963, p.10). The fact that the two regions were administered 'under a scaffolding Governor-General with two subordinate lieutenant governors' (Oyovbaire, 1983, p. 10) made it difficult to see how they could be described as autonomous federating units while under military subjugation (Diamond, Kirk-Greene, & Oyediran, 1997). Also, none had absolute control over resources as the state was under an imperial regime (Ekeh, 1997).

Following independence, a democratic regime was built along the Westminster parliamentary model which maintained the three regional arrangements until the creation of the Midwestern region in 1963. The electoral crisis of 1964-65 led to the first military intervention in Nigeria's federal experiment which apart from the second republic (1979 to 1983) and various dots of

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<sup>8</sup> There is a great debate about what a federal democracy is and whether there can be a federal/democracy, see for example (Kincaid, 1999; Agranoff & Gallarin, 1997).

unsuccessful and distorted transitions (1992/1993 and 1996), continued to rule the country from the 16<sup>th</sup> of January 1966 until the 29<sup>th</sup> of May 1999 (Table 2.4).

*Table 2.4 Search for Viable Federation*

Year	No. of Regions/States	Degree of Autonomy	Regime type
1914	2	Very high	Colonial
1954	3	Very high	Colonial
1963	4	High	Democratic/parliamentarian
1967	12	Low	Military
1976	19	Low	Military
1979	19	Medium	Democratic/presidential
1991	30	Low	Military
1996	36	Very low	Military
1999	36	Medium and rising	Democratic/presidential

*Source:* World Bank, Nigeria: Washington DC, report No. 24477-UNI, July 23, 2002.

When viewed from a democratic prism both the colonial and military regimes are less relevant as both negate the idea of democracy. However, when the focus is on electoral politics each of these stages has its own associated effects. For example, the colonial arrangements which are recognised as ‘highly autonomous’ were accused of providing politicians and parties with some ethno-linguistic safe havens to build political loyalty along ethnic, regional and religious sentiments (Agbaje & Adejumobi, 2006; Agbaje, 1997). Consequently, partisan political actors in all of the three regions deployed ethnic and cultural differences to enhance their competitiveness and access political power (Kifordu, 2011; Agbaje, 1997). Thus, the Action Group (AG) won the 1959 regional government elections in the western Yoruba dominated region with 49.5% of the total votes. The National Council for Nigerian Citizens (NCNC) and Northern Element Progressive

Union (NEPU) alliance won the eastern region with 64.6% of the votes and NPC won the Hausa-Fulani dominated northern region with 61.2% of the votes (Osaghae, 1998; Bendal, 1999).<sup>9</sup>

Similarly, after the 1966 coup the military distorted the structure by suspending the Westminster model and replaced it with a centralised unitary system of government. The system was later reversed to yet another federal arrangement after the counter-coup of the 29<sup>th</sup> of January 1966. The military stayed in power until 1979 when they fashioned and facilitated the transition that culminated in the formation of the Second Republic based on the American presidential system of government. However, the second republic did not last long, being terminated by another military junta and Nigeria was ruled by the military for 16 successive years. During these two periods of military rule, the federal structure was reconstituted in 1967, 1976, 1991 and 1996 from the existing four regions into 12, 19, 30 and 36 weak federating units respectively (Table 2.4). This, although in conformity with the ‘... appropriate objective structural conditions of the large majority of the Nigerian people’ (Oyovbaire, 1983, p. 20), has dislocated the federal arrangement and ‘... concentrated power in one person, thus opening the gates ... for the worst form of Jacobin dictatorship’ (Ibrahim, 1997, p. 164).

The most obvious implication of this weak federal structure is the overcentralisation of political and fiscal power (Suberu, 2004). On the political side, the presidents’ relationship with the state governors is a ‘superordinate-subordinate relationship rather than a coordinate relationship ... who must carry out instructions from the president’ (Obiyan, 2013, p. 92) and by extension the local government chairpersons. Two examples illustrate this point. First, there is the operation of joint

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<sup>9</sup> Table 2.7.1a) House of Representatives: Regional Results, (Bendal, 1999, p.707).

account by almost all the states of the federation which denied the local governments their respective federal allocation for developmental activities. A joint account is the practice of holding an account into which all funds accruable to local governments are deposited and managed by other tiers governments for the local governments.<sup>10</sup> This has rendered the local governments ineffective as they can no longer function as an autonomous tier of government. Secondly, on two occasions the federal government was seen taking charge of governance at the grass roots level. The most recent was the approval on 17<sup>th</sup> January 2007 by the federal government to deduct money from all 774 local governments to finance the construction of comprehensive primary health care centres in the local governments. This practice led to the state governments taking the federal government to court in order to seek redress.

Also, the pattern of the separation of power among the three arms of government is obscured to the extent that the executive and the legislature become engaged in power tussels that often ignite impeachment proceedings, either against the executive or the leadership of any of the two houses – the Senate or House of Representatives – between 1999-2003 (Obiyan & Amuwo, 2013; Isumonah, 2012 ). To neutralise this tension, Obasanjo was reported to have allegedly masterminded the 2003 elections to ensure that only those he approved of either won back their seats or gained entry as a fresh member of the red (Senate) and green (House of Representatives) chambers (Isumonah, 2012 ). Similarly, the judiciary which was ordinarily supposed to check the excesses of both the executive and legislature was affected by this overcentralisation. It is argued

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<sup>10</sup> The literature on this practice seems not explicit, perhaps, as it is not a recurrent practice. However, element of this can be found in (Adeniyi, 2011; Lewis & Stein, 1997).

that the judiciary in Nigeria appeared ‘... sandwiched in the executive and has often been smeared in corruption to pass contradictory judgements in favour of the incumbents’ (Nweke, 2013, p. 67).

Consequently, this institutional setup may accounts for the incumbent’s ability to ‘... exploit their control over state resources to stay in power’ (Gandhi & Lust-Okar, 2009, p. 412). For example, in preparation for the 2003 general elections the executive

... refused to release any funding for the commission [(INEC)] until late 2002. The president provided monies for the election itself just forty-eight hours before polling day. Both financing delays served as a body blow to INEC efficiency, forcing it to scramble first to organise the registration (Kew, 2004, p. 148).

Secondly, the weak federal structure has subjected the electoral commissions and officials to monetary and financial inducements from politicians. For example, during the 2003 elections it reportedly also

suffered from a host of infrastructural problems that left it ripe for abuse, not least of which were the poor salaries for its critical polling station officers, who earned a mere [one thousand Naira (N1000 equivalent to)] less than US \$8 per day for the few days they worked. ... we saw INEC polling station officials demanding payments from a local PDP leader, who assured them that the LGA chairman (also PDP) would settle accounts once the process was complete (Kew, 2004, p. 150).

This act damages the image and credibility of The Commission and the elections at large.

Confounding this is the control over the security apparatus by the central government. While this may not appear to be a problem in other countries where security is not much of an issue, in Nigeria where politicians appear to act with impunity the control of security apparatus has significant implications on the elections and electoral outcomes. To effectively manage elections INEC requires the services of security personnel (Olurode & Jega, 2011). The apparent control of the police by the presidency provided incumbents with a potential agent of coercion which could be

employed during elections to ensure victory. For instance, during the 1983 elections, a returning officer of the Ondo state governorship elections was questioned by UPN agents over the submission of false results by NPN agents and he replied that he ‘... could no longer entertain any argument because he had his order from Lagos (the then Federal Capital) that Mr. Omoboriowo should be declared governor. He said this in front of policemen, [(National Security Organisation)] NSO men, and some FEDECO officials.’<sup>11</sup> In fact, as I shall demonstrate, the Nigeria Police were reported to be allegedly involved in different cases of electoral rigging and in the protection of the perpetrators of electoral fraud.

Also, the institution that is supposed to remedy such unrestrained behaviour appeared inactive and usually sided with the government in power. The controversial interpretation of 2/3 of 19 states by the Supreme Court during the 1979 elections is a classic example. Section 34A(1) of the Electoral Decree of 1979 demands for a candidate to be duly elected as president, to score the highest votes cast at the election; and not less than one quarter of the votes cast in each of, at least, 2/3 of all the states of the federation. Nobody doubted Shagari’s highest number of votes and that he had the required one quarter of votes in 12 of 19 states except for Kano where he managed to get about 19.4% (Oshagae, 1997, pp.127-29; Iyayi, 2006, p.11; Okoye, 2009, p. 137). The Unity Party of Nigeria (UPN) challenged the return of Shagari by FEDECO on the grounds that he had not secured the above legal requirement. The first tribunal held the results on the grounds that

... It does not require the opinion of an expert in mathematics or a computerist to work out what 2/3 of 19 means. It is enough to say that any student in a primary school, tutored in the subject

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<sup>11</sup> Document No. 29, Violent Political Unrest in Ondo State, The Guardian, Aug. 22<sup>nd</sup>, 1983, pp. 2 & 16) available in (Usman, 2002, p. 84).



of 'fractions' in simple arithmetic, will have no difficulty in getting 12 if asked to find  $\frac{2}{3}$  of 19 (Osaghae, 1998, p.128).

Awolowo appealed to the Supreme Court which dismissed the petition and held that:

If the number 13 which is the number nearest to  $\frac{2}{3}$  of States had been intended, the Federal Military Government would have said so in clear terms. In any case, as between 13 States and  $12\frac{2}{3}$  States, the figure of  $12\frac{2}{3}$ , considering all the circumstances, appears to us to be the intention of the Federal Military Government in the context of sub paragraph (ii) of sub section (1) (c) of section 34A. Furthermore, it is, we think, fallacious to talk of fractionalisation of the physical land area of a state when the operative words of section 34(AO (1) (c) (11) relate undoubtedly to the votes cast by the voters in the state at the election.<sup>12</sup>

The two judgements, argued some scholars, were made in favour of NPN because the party was the Federal Military Government's chosen party<sup>13</sup> (Osaghae, 1998; Iyayi, 2007).

Lastly, the institutional arrangement has set up a fertile ground for executive arbitrariness. For example, it was alleged that Eme Awa was removed from the office of the chairperson of the National Electoral Commission when the president realised that Awa was not amenable to manipulations (Ibrahim, 1997) just as Obasanjo was alleged to assume the power to determine the political fate of some elected governors. Consider Governor Ladoja's narration of what transpired between him and Obasanjo at the latter's Ota Farm: 'Obasanjo asked whether I came to beg [(to apologise)]. I said no. He said I should go and resign. I said no. He said I will be impeached. I said you cannot get two-thirds. He said two-thirds is my foot' (The Nation, 2<sup>nd</sup> October 2011, p.10). Governor Ladoja was indeed impeached and when the court ordered his reinstatement the then incumbent refused to enforce the order.

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<sup>12</sup> This is part of the Judgement reported in the All Nigeria Law Report of (1979, p.120 as cited in Okoye, 2009, p. 137).

<sup>13</sup> (Awofeso, 2013).

In short, the federal arrangement has serious implications for the conducting of elections in the country and when viewed in combination with the demographic and political context, the trio examined the effects of electoral governance in Nigeria as a veritable endeavour. This is more considering that the Nigerians' democratic enthusiasm remained high, despite the deep-seated practices of electoral rigging, fraud, political manipulations and persecution, as Nigerians remain committed to democracy (Kirk-Greene, 1997, p. 49; Diamond, Kirk-Greene, & Oyediran, 1997).

#### *2.4 Trajectories of Electoral Authorities in Nigeria*

Nigeria is among the few countries in Africa that started their democratic project with an independent electoral commission (Mozaffar, 2002). Others are Sierra Leone, Ghana and the Gambia. However, while independent by default, the Nigerian electoral commission suffered three institutional challenges. Firstly, a careful look at the historical evolution of The Commission reveals a generational change in nomenclature and the absence of longevity in service among its principal officers.

*Table 2.5 Electoral Authorities in Nigeria 1958 – Present*

<b>Name Electoral Umpire</b>	<b>Chairperson</b>	<b>Tenure</b>
Electoral Commission of Nigeria (ECN)	R. E. Wraith	1958-1959
Federal Electoral Commission (FEC)	Eyo E. Esua	1964-1966
Federal Electoral Commission (FEDECO)	Michael O. Ani	1976-1979
FEDECO	Justice V. Ovie-Whiskey	1980-1983
National Electoral Commission (NEC)	Eme Awa	1987-1989
NEC	Humphrey Nwosu	1989-1993
NEC	Okon Edet Uya	1993
National Electoral Commission of Nigeria (NECON)	Sumner Karibi Dagogo-Jack	1994-1998
Independent National Electoral Commission (INEC)	Justice Ephriam O. I. Akpata	1998-2000
INEC	Abel I. Guobadia	2000-2005
INEC	Maurice Iwu	2005-2010
INEC	Attahiru Jega	2010-present

*Source:* ERC, 2008, p.98 and Junaidu, 2011, p.118

Table 2.6 indicates that from 1958 when the first electoral commission was established to the present, the independent national electoral commission (INEC) has had six different names and 13 chairpersons. Out of the 13 national chairs only Abel Guobadia finished his tenure and retired honourably.<sup>14</sup> Others who have stayed long-term (between 3 and 5 years) are seen more as government personalities than neutral arbiters. For example, the integrity of Ovie-Whiskey and Iwu was questioned as both conducted elections that were regarded as the most fraudulent in the country's electoral history - the 1983 and 2007 general elections (Ibrahim & Garuba, 2010; Tar & Zack-Williams, 2007). Even the current chairperson – Attahiru Jega – who has been in office since 2010 is thought by some to be compromised,<sup>15</sup> even though he performed creditably in the 2011 elections.

Secondly, The Commission seems to be more answerable to the government in power instead of being a non-partisan electoral institution. For example, during the military administration of Babangida, NEC was said to have been charged with '... implementing [the regime's] blanket ban on erstwhile political and public office holders from partisan politics, ...[making the regime] the commission's agent provocateur' (Ibrahim & Garuba 2010, p.16). Also, many have pointed accusing fingers at Abel Guobadia over the mismanagement of the 2003 general elections (Kew, 2004), just as the failure of the 2007 elections has been allegedly ascribed to the impartiality of Professro Maurice Iwu (I shall return to this in Chapter Four).

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<sup>14</sup> (Guobadia, 2000).

<sup>15</sup> Some portions of the Nigerian electorate doubt Jega's integrity. For example, in the series of comments on The Punch, November 18<sup>th</sup>, 2013 publication on the topic: *Anambra Gov. Elections inclusive – INEC*, two commentators lamented: "who will pay for INEC's incompetence? What about taxpayers' money? How can Jega defend his integrity in all of these?" (Fatima). Another one said: "Jega is a disgrace". These comments and story are available online: <http://www.punchng.com/news/anambra-gov-election-inconclusive-inec/>.

Lastly, The Commission continues to face an administrative power tussle internally. For example, in 1982, the Secretary of The Commission was by law referred to as the ‘chief electoral officer of the federation’ whom many including several National and Resident Commissioners assumed to be the accounting officer of The Commission and to whom their loyalty resides as against the chairman (FGN, 1991). This created a feeling of insubordination especially when the then military government started to address the commission’s secretary as Director General despite the existence of the office of the national chairman of The Commission (Awa, 1997, p.131).

## 2.5 *The 2007 and 2011 Elections ‘Dominant-power politics syndrome’*

Much of the discussion so far focuses on the character of Nigerian state as the pitch for electoral contest, with the political elite’s dynamics in the build-up to the 2007 and 2011 elections taken for granted. This descriptive exploration ignores an important aspect that could have an effect on the recognised differences between the 2007 and 2011 elections – the ‘dominant-power politics syndrome’. This is a political configuration in which one political grouping either as ‘a movement, a party, an extended family, or a single leader dominates the system in such a way that there appears to be little prospect of alternation of power in the foreseeable future’ (Carothers, 2002, pp. 11-12).<sup>16</sup> Elections conducted under such arrangement witness excessive use of ‘state’s main assets’ – resources, jobs, instruments of public information, and the police power - in service of the overriding group, Carothers explained.

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<sup>16</sup> In dominant-power politics syndrome the political space is open but limited, political contestation is constrained with weak oppositions group despite the existence of major democratic political institutions. Its sister category is feckless pluralism which offers a significant amount of political freedom, holds regular elections perhaps with a power alternation between political groupings, but yet participation remains only broad during election time (Carothers, 2002).

The build-up to 2007 elections appears to fit this depiction. The election witnesses a president who seemed committed in his effort to take over the ruling-PDP, expanding and consolidating his political fortunes. Obasanjo is said to be at the peak of the party, dispensing patronage to secure loyalty (Ilfie, 2011, p. 254). For instance, it is alleged that the President continued to mastermind the replacement of the party's chairmanship replacing individual leaders almost every after two years – from Chief Solomon Lar, Engineer Barnabas Gemade, and Chief Audu Ogbeh, to retired Colonel Ahmadu Ali. This was presumably in order to ensure the emergence of an amiable party leader.<sup>17</sup> This perhaps explains the description of the party by the International Financial Institution as a patronage network of powerful individuals, lacking any ideological unity but apparent lust of power (Punch, April 16, 2006).

Also, the dynamics of intra-inter party group relations which usually manifest themselves in symbolic cooperation and coordination of elites became volatile. The ruling-PDP suffered the most serious setback with many of its members leaving for other parties despite politicians' normal inclination to belong to the incumbent party. For example, virtually almost all the leading founders of the PDP have left the party before the 2007 elections and there is no state chapter of the party that is not immersed in serious crisis (Odukoya, 2013). Indeed, as I shall demonstrate later this party infighting appeared to have effects over the administration of the 2007 elections and caused serious legal battles before and after the elections.<sup>18</sup>

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<sup>17</sup> Retired Colonel Ahmadu Ali is believed to be the right person as he is a former military colleague to Obasanjo and had enjoyed a smooth long lasting ride with him (Isumonah, 2012 , p. 51).

<sup>18</sup> Chapters 4, 5, and 6 provide empirical explanation of these effects.

In addition, although the 2007 elections featured an ‘institutionalisation of political power’<sup>19</sup> with political elites blocking Obasanjo’s third term agenda,<sup>20</sup> the President continued to control the country’s electoral landscape and politicians’ political fortunes. Obasanjo and his PDP-installed machineries remained instrumental in the elections, defining who was to contest for what position.<sup>21</sup> The president is believed by many, including the then leader of the ANPP Caucus in the House of Representatives, Alhaji Aminu Tambuwal, to have embarked on a desperate journey ‘to destroy all existing political structures in Nigeria including the one that brought him to power.’<sup>22</sup>

Accordingly, governmental institutions such as the Economic and Financial Crime Commission (EFCC), Independent National Electoral Commission (INEC), and the seemingly faulty constitutional provisions, were allegedly engaged to block several politicians. For example, governors who have fallen out with Obasanjo such as Rashid Ladoja, Peter Obi, and Joshua Dariye of Oyo, Ekiti and Plateau States respectively were charged with corruption and impeached in an apparent attempt to discredit their political future. In fact, according to a former Nigerian Ambassador to Switzerland, Alhaji Yahaya Kwande, the chairperson of the Plateau State PDP Elders Forum, “the EFCC in today is worse than Hitler’s Gestapo and unless it is called to order, it will destroy the very fabric of our nascent democracy through its selective prosecution of perceived opponents”.<sup>23</sup> Others, such as the Vice President, Alhaji Atiku Abubakar, as I shall

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<sup>19</sup> (Posner & Young, 2007).

<sup>20</sup> Daily Trust, April 26<sup>th</sup>, 2006 and Vanguard, April 26<sup>th</sup>, 2006.

<sup>21</sup> Niyi Akinnaso was reported by Isumonah, (2012, p. 57) to have written that: "When I asked a friend last week about his plans to run for the Senate seat in my Senatorial District, he told me what a prospective gubernatorial aspirant had told me earlier: ‘We are still waiting for signals from Baba (father-figure in Yaruba).’

<sup>22</sup> Vanguard, February 22<sup>nd</sup>, 2006.

<sup>23</sup> Thisday, November 12<sup>th</sup>, 2006. Also, see chapters 4 and 5 for detail empirical assessment.

demonstrate later, was forced to leave the party and harassed by the presidency until five days to the elections.

The dominant-power politics that characterised the 2007 elections mattered in the conduct of good elections. The electoral terrain was full of informal power dynamics that entrenched deep internal party divisions, causing serious infighting among members who broke away to form or join other political camps. Several contestants, as we shall see, do change their respective political umbrella either from the ruling party to the opposition or vice-versa. The Vice president, for instance, left the PDP and joined with the former Lagos Governor, Bola Ahmed Tinubu, to form the Action Congress (AC). This political dynamics thus affected the elections, capacity of the incumbent and opposition parties and candidates, and the administration of the elections as well.

Unlike the 2007 elections when the then president appears well engaged in enhancing his political fortunes, the 2011 electoral context appeared different. The President during the 2011 elections is not only a product of a fraudulent election,<sup>24</sup> but also a person who assumed office through presidential incapacitation and death.<sup>25</sup> These realities quickly lead to confrontation with an existing elite dominant-power pact. This is a sort of PDP-in house consociational arrangement that seeks to share the country's highest political office among the country's existing divides – north

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<sup>24</sup> Almost all sources that commented on the conduct of the 2007 presidential elections, including its beneficiary accepted that the elections are fraudulent.

<sup>25</sup> During this period, "Nigeria faced the threat of destabilisation in 2009 when President Yar'Adua was declared incapacitated, creating a potential power vacuum. To fill the void, the National Assembly named Vice President Goodluck Jonathan as acting president during President Yar'Adua's extended absence from office as a result of a medical condition, a move many considered unconstitutional. Jonathan assumed the presidency outright after Yar'Adua's death in May 2010" (NDI, 2011, p.14, see also Adeniyi, (2011).

and south dichotomy.<sup>26</sup> The failure of party to honour this gentleman's agreement seems the beginning of the mapping out of the successes and failures of the 2011 elections.

Despite attempts to cleanse the Nigerian dirty electoral process and enhance its credibility,<sup>27</sup> many believed that the President, a Christian and southerner, should have conceded his presidential bid and honoured the agreement. The argument is that President Obasanjo was a southerner and Christian and had served the 8 years turn due for the south; he had been replaced by Umaru Yar'Adua, a northerner and Muslim who was expected to have served his region's 8 year turn. Yar'Adua's untimely death in 2010, midway through his term, opened the door for then-Vice President Goodluck Jonathan to ascend to the presidency. The power rotation agreement presupposes that Jonathan should not have contested the presidency because the north had not finished its own turn.<sup>28</sup> Thus, when Jonathan decided to contest for the elections, many political groupings within the ruling party felt upset. In other words, Jonathan's candidature seems a possible explanation to the pattern of voter turnout in the 2011 presidential elections and his party's apparent loss of political support across northern states.

Another underlying feature of the 2011 elections is the apparent weakness of the opposition parties and their failure to form a formidable coalition against the PDP. The strongest opposition parties

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<sup>26</sup> The pact known as zoning formula requires the presidency to alternate between Nigeria's northern and southern regions. Some scholars even insist that the agreement extent to the country's existing religious divide of Muslim (northern candidate) and Christian (southern) groups (Paden, 2012, p. 14). Since a southern president held office from 1999 to 2007, a northern president was expected to hold office from 2007 to 2015. Jonathan ultimately won the party's ticket despite the zoning debate, after winning a majority of votes in the PDP primary election.

<sup>27</sup> Such efforts include the President appointment of a session civil right activist and an academic, Professor Attahiru Jega, as INEC-chair,

<sup>28</sup> See for example (Paden, 2012; Ebere & Chloe, 2010).



during the elections both at national and state level were CPC, ACN, and ANPP. The CPC is a power to reckon with for its vast northern support and a candidate who is generally regarded as man of integrity and above reproach.<sup>29</sup> However, the CPC was a new party, having no claim to state or federal resources. The ACN was lacking a strong presidential candidate, Alhaji Nuhu Ribadu, who is believed to have unfairly stepped on the toes of many political gladiators when he headed the federal government anti-corruption commission. But the party is well grounded in majority of the south-western states, plus having a couple of members in the national parliaments. This enhances the party's electoral campaign and influence, plus it has the support of some northern elites such as Alhaji Dalhatu Bafarawa, a former governor of Sokoto state from 1999 – 2007. The ANPP, although losing its political base in the north, had political representation at the national legislature and controlled three states in the federation. Before the elections there were attempts by these parties to form an alliance to face the ruling party. The much hoped alliance between the CPC and ACN is believed to have been turned down when Ahmed Bola Tinubu allegedly made a deal with the ruling party 'in return for immunity from prosecution by the EFCC and the right to nominate the next attorney general and the minister petroleum' (Paden, 2012, pp. 19-20).

In short, the significance of the power dynamics played in the build-up to the 2011 elections revolves around the non-adherence of the PDP zoning formula, desperate politicians and winner-take-all syndrome which seems to explain the failure of any alliance by the oppositions. In all, both the 2007 and the 2011 electoral contexts highlight the relevance of what Carothers' calls

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<sup>29</sup> Several sources both domestic and foreign indicate their respect for the personality of Buhari both before and beyond the 2011 elections. He is believed to be incorruptible, honest, and credible person (NDI, 2011; EU EOM, 2011; HRW, 2011; Paden, 2012).

dominant power politics in understanding transitional regimes. The 2007 elections provided a typical example of a sitting president handpicking his successor and thus doing all it takes to ensure victory. The 2011 elections on the other hand showed a situation where incapacitation and death provided an acting-president with a chance to become a sitting president and thus blocked the possibility of an ‘open-contest.’<sup>30</sup>

## 2.6 Conclusion

The foregoing analysis clearly shows that electoral politics in Nigeria has been problematic and subject to numerous challenges, among which is the character of the Nigerian state as the arena of political contest. In this chapter I examined the extent to which the Nigerian electoral terrain structures the behaviour of partisan political actors – parties, candidates and electorates – and non-partisan actors such as electoral officials and the commission. Drawing insights from the country’s historical experience as articulated by experts on democratisation in Africa and Nigeria in particular, I paid attention to how the demographic, political and institutional contexts of the country shape the behaviour of political actors and the administration of credible elections. The obvious conclusion is that the combinations of these factors have provided political actors with fragile electorates that are vulnerable to manipulation in several ways. For example, the absence of an accurate national voter list has provided political elites with a proper tool for influencing electoral outcomes. Also, the sharpening of ethnic, regional and religious differences by imperialists’ policies and the subsequent utilisation of the same by political elites has rendered the electorates easy prey to naïve political mobilisation, the very aim of which is private not collective

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<sup>30</sup> For detail discussion of an open contest see Cheeseman (2010).

interests. This is in addition to their poor condition which makes them susceptible to financial inducements during elections as voters, electoral officials, party agents or local political champions.

On electoral administration, specifically, besides facing the above demographic challenges, The Commission struggles with inchoate federal and party systems that ultimately might influence the efficiency of the electoral processes. The combination of these three undemocratic processes – colonialism, militarilism and a concealed rentier state was characterised on the one hand with sudden bumper oil wealth and on the other well established patrimonial politics, which all helped to make political office attractive. As such winning elections is seen by individual candidates, parties, kinships, ethnic and tribal groups, religious sects, and so on as a route to political and economic prosperity. This suggests that while effective electoral governance does not guarantee the democratic quality of elections as other factors are at work, it is impossible for elections to satisfy democratic values without proper electoral administration. When we understand the systematic role of electoral governance within such a political environment, it should be possible to tell when elections fall short of the democratic standards. Accordingly, the task of the next chapter is to build a framework that integrates electoral governance into the democratic quality of elections which is to be applied in the remaining empirical chapters of the thesis.

### *Chapter 3 Democratic Quality of Elections: Concept, Measurement & Methodology*

This chapter develops a methodology to gauge the democratic quality of elections in Nigeria. It begins with a discussion of the concept of democracy as the underlying concept of democratic elections. This is to situate the concept of democratic elections within the prevailing conceptions of democracy. The second section provides explanations for the selection of the 2007 and 2011 elections over other elections conducted in the country. The third section operationalises the democratic quality of elections by reconstituting Lindberg's 11 empirical indicators of participation, competition and legitimacy. This is to complement the observed weaknesses of Lindberg's indicators, as discussed in literature on democratisation. Section four highlights the relevance of electoral governance and builds on the ideas of electoral governance of Shaheen Mozzafar and Andrea Schedler (2002) and Jorgen Elklit and Andrew Reynolds (2002; 2005). It classifies the explanatory variable into three: an autonomous electoral commission, a well organised electoral process and sound mechanisms of electoral dispute resolution. Section five contains a discussion on data collection, analysis and measurement validity. Section six discusses issues of ethics and limitations and the final section concludes by presenting this framework as a model for the empirical examination of election quality in Nigeria.

#### *3.1 Democratic Quality*

The essence and value of democracy is the establishment of a system of government in which the people are made the main source of authority to govern. Perhaps that explains the consensus that in the contemporary world, there does not seem to be any other concept that is so central to policymakers and scholars as democracy (Coppedge, et al., 2011; Przeworski, 2010). Thus, it

could be argued that unless the point at which a political system progresses or regresses in making sure that citizens are the real source of authority, we might not adequately explain what democracy is and how democratic an election is in any political system. Moreover, a significant majority of regime rating indexes including Freedom House depend on how regimes perform in electoral politics.

Likewise, as the world is democratising, international, regional, subregional, national and local commitments depend on the valid assessment of elections to make a decision about various forms of intervention and projects. It is reported that billions of dollars earmarked for democracy promotion await judgements of democratic quality about the present time, its recent past, its future prospects and the possible effects of giving or withholding more assistance (Coppedge, et al., 2011). Therefore, any concern about deepening democratic quality is a signal of hope for both advanced and fledgling democracies, policy makers, democracy practitioners and analysts involved with understanding public dissatisfaction and democratic discontent (Diamond & Morlino, 2005; Przeworski, 2010).

However, the road to measuring democratic quality is complex, in part because of the ambiguity associated with the concept of democracy (see discussion in chapter 1). Despite these challenges, there are about three ways – the global standards, the liberal perspective and the perspective of quality (either quality in terms of legitimacy or credibility) of measuring democratic quality of elections. Though helpful in resolving some methodological challenges, each of these perspectives suffers some inherent weaknesses. For example, judging electoral quality using a universal standard has some elements of subjectivity (Bjornlund, 2004) and disregards several significant

contextual factors that could have far-reaching effects. Also, liberal perspectives while promising, suffer some empirical weaknesses due to the inordinate complexity of the electoral process in new democracies. Likewise, using either the perspective of legitimacy or credibility only to assess the integrity of elections has its own weaknesses. Despite this, each of these groups have offered useful insights which can be harmonised in a more case-based study. This is the task of the next section.

### *3.2 Case Selection*

To evaluate the quality of democratic elections in Nigeria, I employ the qualitative method of controlled comparison. This is a study design that allows for the comparison of most similar cases which have almost the same characteristics but differ in the predictor variable in one or more ways and whose changes may accounts for the observed outcome (George & Bernnet, 2005). The design makes provision for the selection of cases based on method of difference which in its purest form allows for the selection of a pair of cases that are identical in all aspects of the independent variables except the independent variable of interest (Seawright & Gerring, 2008). The method of controlled comparison predominates in political inquiries for its ability to help investigate the complexities of political interations and their effects among large number of actors across multiple level of analysis (Bernnett & Elman, 2007).

Following this approach, I examine the 2007 and 2011 elections in Nigeria as the two elections share almost every explanatory variable such as demography, electoral system, political party system, and although, as acknowledged above, the political context was rather different. Yet, they differ in significant ways. For example, they differ in rules of electoral management and the independence of the electoral authority. The 2007 elections, for example, were conducted when

the president was the most influential figure in the appointment of all the 12 federal electoral commissioners, 37 residential electoral commissioners (RECs) and the chairperson of the electoral commission in the country. In addition, those to be appointed have to qualify to stand for election as members of the legislative assemblies. This requirement makes it easy to appoint party loyalists as a person has to belong to a political party to contest for a legislative post in Nigeria. Also, during the 2007 elections the commission's budgetary allocation has to be approved by the executive before disbursement (TMG, 2007; ERC, 2008; EU EOM, 2007; NDI, 2008).

On the contrary, the 2011 elections were conducted when the president's power to appoint the 37 RECs was subjected to legislative approval and party membership was removed as a requirement for appointment. Also, the electoral commission was placed on *first-line-charge* budgetary financing. This is a process of deducting a budgetary allocation of an institution directly from the federation account to a separate account which the institution has complete control over. In addition, The Commission was absolved from seeking presidential approval of all its administrative activities. These changes raise the commission's autonomy and protect it from excessive interference (Lewis, 2011; Joseph & Kew, 2008).

Secondly, the elections differ in electoral logistics and other components of the electoral processes. For example, the 2007 elections were reported to have suffered serious logistical challenges of shortage of electoral materials. During voter registration exercise, the electoral commission failed to provide the required voter registration materials and did not train the ad hoc electoral officials that man the registration centres (TMG, 2007). Also, on Election Day, sensitive electoral materials including ballot papers and result sheets were either supplied in limited numbers or not delivered

completely in many places (TMG, 2007; LDC, 2009; ERC, 2008). The candidate nomination and campaign processes also witnessed case of bias to the extent that The Commission was faced with the challenge of printing and distributing 63 million ballot papers five days before the presidential elections (INEC, 2007, p. 35; TMG, 2007).<sup>1</sup>

Comparatively, the 2011 elections appear well organised and executed as The Commission makes operational all the 8,800 registration areas and 111, 119 polling units in the country (INEC, 2011). This include not just providing skilled electoral field officials, but making sure that all necessary materials for the conduct of the elections were adequately delivered (PSC, 2011; EU EOM, 2011; NDI, 2011; INEC, 2011). This is in addition to vibrant electoral courts and tribunals that prove to be active in many ways.

*Table 3.1 Pattern of Voter Registration in 2007 & 2011*

Year	Voting age population	Registration	Percentage of VAP
2011	81,691,751	73,528,040	90.00
2007	71,004,507	61,567,036	86.70

*Source:* Author's compilation<sup>2</sup>

Lastly, the two elections although conducted under the same majoritarian - *first-past-the-post* - system each produced different electoral outcomes. For example, considering the quality of the voter register alone, Table 3.1 demonstrates that the 2011 general elections improved upon the 2007 elections. Contention about population figures aside, the former succeeded in registering

<sup>1</sup> This is due to the Supreme Court judgement which order for the inclusion of Vice- President Atiku Abubakar on the ballot paper. The Judgement was delivered on the April 16<sup>th</sup>, 2007 and the elections are scheduled to holds on the April 21<sup>st</sup>, 2007.

<sup>2</sup> All data on 2007 and 2011 row are obtained from three sources IDEA, (2011) available on: [IDEA International](#), accessed on the Oct. 5<sup>th</sup>, 2011; [African Election Database](#); and from INEC during fieldwork.



almost all (90%) eligible voters in the country while the latter excluded as many as 10 million or 13.3% of the total voting population. This, as we shall see later, is despite the existence of cases of multiples, minor, and phantom registrants in the 2007 national voter register. On the contrary, the 2011 elections voter registration exercise provided a more reliable voter register which has fewer cases of irregularities. In fact, the total of over 73 million registered voters declared was after the removal of 870, 612 cases of multiple and minor registrants (EU EOM, 2011; PSC, 2011; NDI, 2011; INEC, 2011). Similarly, the extent of competition between candidates and parties is higher in the 2011 elections compared to the 2007 elections. This indicates that the 2007 elections lacked effective political competition which is central to electoral quality.

This variance enables us to look at the impact of electoral governance in explaining what makes election democratic and enrich the theoretical debate of democratisation by elections. Using process tracing, these developments appear significantly connected and a qualitative comparison of the two elections can broaden our understanding of elections' quality as much of these political divisions are also manifest across the continent. Likewise, several incumbents within Africa do not appear ready to let democratic principles triumph especially during elections. In fact, 'data on election tallies over time suggests that African elections reflect real, but unequal, political rivalries ... as losers have usually been able to establish a presence among the voters at election time, but winners have usually won comfortably' (Bratton, 2013, p. 24). Further, the study has the capacity to enhance theory building considering that many studies carried out on electoral politics are based on large-N comparison and few focused on contextual understandings. This is in addition to the potential of case study comparisons in generating new set of hypotheses (Adcock & Collier, 2001).

### 3.3 *The Dependent Variable: Operationalizing Democratic Elections*

As indicated earlier, credible elections are prerequisites of democracy. This is not to fall into Terry Karl's 'fallacy of electoralism,' but elections remain the defining tool of democracy (Katz, 1997). Indeed, almost all definitions of democracy symbolise the presence of free, fair and competitive elections (Levitsky & Way, 2010; Dahl, 1973; Diamond, 1999; Diamond & Morlino, 2005; Schmitter & Karl, 1991; Collier & Levitsky, 1997). Democracy is a political process which denotes self-government juxtaposed in freely elected representative institutions by supposedly equal individuals (Przeworski, 2010). It is a political process which empowers all adults with an equal right to participate in the entire processes of accessing and exercising the power to make binding decisions (Munck, 2007).

Therefore, for democracy to flourish there has to be periodic elections. But is this applicable to all elections? On the one hand, demo-optimists agree that election irrespective of its qualities has self-reinforcing powers (Lindberg, 2006; Hadenius & Teorell, 2007). On the other hand, a recent examination of the democratising effects of elections across Africa found that only a few countries follow this pattern and the majority backslide toward autocracy (Bogaaards, 2013). Thus, the demo-pessimists argue that the violations of the freeness and fairness of elections have led to the creation of hybrid regimes that teetered toward democracy (Levitsky & Way, 2010; Morse, 2012) and exacerbated autocracy (Bratton, 2013). That is instead of making people the ultimate source of authority, elections in these regimes tend to be mere rituals for recycling ruling elites. This practice contradicts even the literal meaning of democracy as rule of the people.

To the demo-optimists, however, elections as democratic institutions are naturally constrained. Voting, it is argued, is conducted under established rules and regulations and managed by individuals or institutional rules set by the incumbents who often have an interest in the outcome (Przeworski, 2010). Therefore, absolute democratic merits such as inclusiveness required by liberal democratic doctrines are matters of gradual achievement. Moreover, political systems, usually ‘... combined both democratic and undemocratic features, [and] polyarchy was a matter of degree’ (Lindberg, 2006, p.143 citing Sklar, 1987 and Dahl, 1973). Perhaps the persistent call that elections must be periodic at regular intervals, conducted under equal suffrage which reflects the idea of ‘one-person, one-vote’ suggests the inherent value of holding repetitive elections. However, this does not exclude electoral excellence. On the contrary, elections have to be credible. However, a careful look at the literature on comparative democratisation reveals the lack of a concise definition of what constitutes democratic elections. Many of the existing efforts while helpful have suffered some conceptual and methodological challenges (Morse, 2012, p. 163). Moreover, ‘the quality of [the] contests may vary in very significant ways’ (Norris, Frank, & Coma, 2013, p. 124).

The most often cited document in explaining the empirical qualities of democratic elections is Staffan Lindberg’s *‘Democracy and Elections in Africa’*. In it, Lindberg defines that an election needs to be participatory, competitive and legitimate to be democratic. He measures participation by the extent of voter turnout, the presence of the opposition, and the absence of autocratic guards. The understanding is that a large turnout signifies people’s exercise of political power, while opposition participation certifies contestation, and its absence portends a significant threat to the overall electoral processes. Similarly, when existing autocrats decide to quit and observe the rules

of the game, electoral processes assume a considerable measure of integrity. Competition as an attribute has four components: the winner's share of the votes, the largest party's share of seats, the second party's share of seats and power alternation.

*Table 3.2 Lindberg's Democratic Elections*

	<b>Participation</b>	<b>Competition</b>	<b>Legitimacy</b>
Democratic elections	Voter turnout	Winner's share of votes	Losers' acceptance of defeat
	Presence of opposition	Largest party's shares of seats	Peaceful electoral process
	Absence of autocratic guards	Second largest party shares of seats	Election regime survival
		Power alternation	

*Source:* Author's compilation

A legitimate election is one in which losers accept defeat, peace characterises the process, electoral rules are observed and the electoral regime survives (Table 3.2). This conception appears well suited to compare and contrast democratic elections. However, while its operationalised components of democratic elections capture the basics of democracy, some of the indicators can be improved. I shall return to this shortly.

Steven Levitsky and Lucan A. Way (2010) explained that elections in democracies are free to the degree or relative presence or absence of fraud and voter intimidation and fair to the extent that oppositions are not subjected to any form of repression or harassment. That is each contestant has unrestrained access to media and can campaign without any form of political hinderance (Table 3.3). The Table indicates that instead of operationalising free and fair elections, Levitsky & Way focus on unfair elections as tools in the hands of autocratic incumbents. Consequently, the list of indicators for components 2, 3 and 4 are almost referring to the same issue, making it difficult, if not impossible, to examine and weight/classify each empirically. This is at the time when many

transitional and advanced democracies are battling with campaign finance and fair media coverage (Norris, Frank, & Coma, 2013).

*Table 3.3 Levitsky & Way's Democratic and Unfair Elections*

	<b>Element</b>	<b>Indicators<sup>3</sup></b>
Unfair elections	Major candidates are barred for political reasons	
	Coordinate or tolerated electoral abuse	Serious partisan manipulation of voter rolls, large scale voter intimidation or disruption, ballot-box stuffing, multiple voting, or other forms of ballot tampering, and falsification of result.
	Significant formal or informal impediments – coordinate or tolerated by the national government – prevent the opposition from campaigning on an equal footing	Violence against opposition party activists, candidates, or infrastructure and use or abuse of laws regulating public meetings limits the opposition's ability to campaign
	Uneven electoral playing field	Electoral authorities systematically biased in favor of incumbent, highly uneven media (state-owned biased in favor of incumbent, significant share of private media packed by incumbent through the use of taxes, advertisements, subsidies, debts, censorship, bribery, and systematic slant of coverage in favor of government), highly uneven access to resources

*Source:* Author's compilation

Clientele and personality politics are still relevant in both Europe and developing countries (Elischer, 2013). Perhaps this explains Levitsky & Way's contradiction with other scholars of electoral authoritarianism, as for them 'any one of the following indicators is sufficient to score an election as unfair' (2010, p.366).

Similarly, if not for its insistence on policy direct linkage with voting, Sarah Birch's democratic voting would have been a workable framework. According to Birch, an election is democratic to the extent that it offers people the chance to choose among contestants their leaders and '... results

<sup>3</sup> For details of these indicator see Levitsky & Way, (2010) appendixes I, 1; 3.2.; and 3.3., pp. 366-367.

are determined on the basis of those choices by means of pre-established rule’ (Birch, 2011, p.17). By this conception, Birch appeared the first to attempt a linkage between the act of voting and government responsiveness. The author constructed three criteria - inclusiveness, policy-voting and effective aggregation - of democratic voting (Table 3.4). An inclusive election is one in which all eligible citizens are given an equal right to vote and to be voted for.

*Table 3.4 Birch’s Democratic Voting*

	<b>Inclusiveness</b>	<b>Policy-oriented voting</b>	<b>Effective aggregation</b>
Democratic voting	Right to vote	Equal access to information	Accurate counting
	Opportunity to vote	Free expression of preferences	Neutral vote-seat conversion
	Right to stand for election		Impartiality
			Transparency

*Source:* Author’s compilation

Policy-voting requires that ‘voters must have access to adequate accurate information about the policy proposals and performance of the options on the ballot, ... must be able and willing to access and process that information to make a judgement on its basis, and ... must be able to vote according to their preference’ (Birch, 2011, p.23). Also, votes cast must be given equal weight. That is counting and tabulation must be accurate and based on actual true votes cast. Similarly, the votes-seats conversion formula must be neutral and transparent such that no contestant – candidate or party – is left in doubt.

Unfortunately, the requirement that each voter must have equal and accurate information about policy proposals limits the applicability of the framework beyond Western democracies. This is because the majority of the populace, particularly in Africa, understand little about citizens’ rights when it comes to decision-making and the challenge of democratic governance in many developing democracies is that political elites have adapted various strategies to hold on to power,

including the use of ethnic and clientele politics upon which they rally support against policy proposals (Bratton, 2013; Posner & Young, 2007). This perhaps explains the absence of policy issues in many of the manifestos of the major political parties and candidates in Nigeria, as in the 2007 and 2011 elections. In fact, as I shall demonstrate, in Nigeria no political party has a single unit or department devoted to research, policy and development. However, the analytical value of the model remains, as indicators of the right to vote, the opportunity to vote and the right to stand for elections clearly express the ‘inclusion of people as eligible decision-making members of the community’ (Birch, 2011, p.18).

In this regard, I agree that democratic elections have to be inclusive, often expressed in universal suffrage, regular and competitive with more than one active political party, and observe a certain level of civil and political liberties. Indeed, democracy is about a system that offers the adult population an equal chance to partake in public decision-making by providing multiple options for an informed choice. This is what an open electoral contestation and full franchise symbolised, which empirically indicates effective participation and competition. Therefore, since elections are the foundation of the authority to govern, it then follows that a regime that provides individuals with the right to select their leaders is democratic and the opposite are autocracies. This procedural conception eases empirical and methodological complexities as a broader concept can affect analytic precision (Bryman, 2008).

Consequently, determining effective political participation goes beyond looking at Lindberg’s three indicators of voter turnout, the presence of the opposition and the absence of autocratic guards, especially considering that he uses share of registered voter instead of voting age to arrive

at his percentage of turnout. This is in addition to the fact that voter turnout is contingent on other factors, especially in Africa (Elischer, 2013; Bratton, 2013). Also, the presence or absence of an opposition boycott is a good indicator but to what extent could a judgement of quality be based on the subjective decisions of the opposition? Moreover, we need to know what causes the boycott, as the existing literature points to the relevance of the strategic calculation of actors in explaining the presence or absence of the opposition in transitional regimes (Gandhi & Lust-Okar, 2009).

Again, while Lindberg indicated that democratic elections must have concrete electoral contestation, competition is still measured using ‘vote-share thresholds’, which although relevant have little regard for the strength of individual actor competitiveness. For instance, these measures did not take into account what happens at the candidate nomination level where there can be deliberate restrictions, selections, favouritism and so on. All these are significant in understanding political competition. Besides, scholars, particularly Diamond (2002; 2008) and Bogaards (2007), have emphasised that an effective evaluation of electoral competition needs to move beyond electoral outcomes and to extend to other components of electoral processes that structure actor competitiveness. This clearly indicates the need for the modification of these indicators.

Accordingly, while it is difficult to distinguish democratic from non-democratic elections, the latter is in the failure of the electoral process to guarantee political participation in terms of voter eligibility, openness and competitiveness among contending parties and candidates, and sincerity in terms of balancing the electoral terrain. This is apparent in the mismanagement of electoral institutions, operations and procedures by incumbent or pro-incumbent biases. Typical examples are inflated or incomplete voter rolls, the restriction of opposition access to state institutions such



as unfair media access, political harassment of a different kind, or formal and informal violence<sup>4</sup> (Levitsky & Way, 2010; Bratton 2013; *cf.* Bratton & van de Walle, 1997).

The foregoing leaves us with three elements - the effective participation of voters and contestants, effective competition among and between contestants, and perceived legitimacy. Effective participation is central to any genuine election and is a distinguishing factor of democracy from autocracy. The ability of the former to ensure that every adult person has the opportunity to use his formal rights to vote, organise, protest, lobby and influence the making of binding decisions is what differentiates it from the latter (Diamond & Morlino, 2005; Lindberg, 2006; Katz, 1997). While direct self-government is unrealistic (Dahl, 1989), a community governs itself when public decisions implemented on its behalf are made by its elected representatives (Przeworski, 2010, p.18). Therefore, participation is the key that locks and unlocks the door of legitimate representation. It is the building block of the legitimacy of the government as it imprints preferences on public policy.

Therefore, democratic elections give citizens the chance to be part and parcel of societal governance. In this regard, I measure participation by examining the presence/absence of universal suffrage, the quality of the national voter list in terms of composition, and the presence or absence of multiple, underage, phantom and deceased entries. Indeed, a democratic election is inclusive when all eligible voters have been registered (Hartlyn, McCoy, & Mustillo, 2008; Calingaert,

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<sup>4</sup> Violence is formal when carried out by the state either by its institutions of coercion or appeared to be the sponsor and is ready to protect the perpetrators at all costs. Informal is the opposite of this which always incurs state prosecution. For details see (Bratton, 2007).

2006; Agbaje & Adejumobi, 2006 *cf.* Azinge, 1994). Likewise, all minors and those exempted by law, if any, are not included.<sup>5</sup> Otherwise, it runs the risk of fraudulent ballots. In addition, democratic elections allow the existence of competent oppositions as ‘... individuals and political parties have equal rights to exist and field candidates’ (Lindberg, 2006).

*Table 3.5 Operationalising Democratic Quality*

	<b>Participation</b>	<b>Competition</b>	<b>Perceived Legitimacy</b>
Democratic elections	Presence/absence of universal suffrage Quality of national voter roll No deliberate exclusion of key candidate Effective participation value is 1 or closer to 1	Absence of tampering with voter list, ballot paper, vote tallies and results Corrupt practice such as payment of commission on services rendered, commitment to future governmental contracts Use of petty cash/food/clothing materials to seduce voters And, effective political competition is 1 or closer to 1.	Absence of state repression such as political arrest or intimidation Losing candidate/party accept defeat or winning candidate/party accept the presence of major flaws Peaceful Fewer cases of electoral petition

*Source:* Author’s compilation

To supplement the subjectivity of these indicators, I introduce a quantitative measure which divides the total number of valid votes cast in any election by the total voting age population (VAP). The result obtained is then placed on a scale of 0 – 1, where 0 represents a perfect non-participation (no citizens have voted) and 1 a perfect participation (all voting age citizens voted and cast valid votes) (Table 3.5 column 2).

<sup>5</sup> The restriction referred to excludes any fraudulent attempt to alienate others. Birch distinguishes two types of restrictions – formal qualification for contestation and registration requirements. The former is all restrictions established and recognised by law and conventions such as age and citizenship requirements and the ban on ethnic or religious based political parties. The latter includes the payment of deposits, the collection of signatures and the supplying of personal and party financial or organisational details with the intention of serving as a deterrent to frivolous candidates (Birch, 2011, p.23).

Secondly, democratic elections are competitive when there is no report of cases of ‘outcome’ determinative frauds and ‘first’/‘second’ order malpractices (Norris, 2013). A determinative fraud is a deceitful act that alters the outcome of an election such that winners and losers are different from what each would have been had the act not been committed (Lopez-Pintor, 2010). Similarly, violent intimidation, repression and coercion carried out by the state or its security apparatus, and hired thugs by the opposition or any other groups or individuals which challenge regime stability is first-order malpractice and second-order malpractice are those challenges of electoral maladministration, technical inefficiency and frequent human errors that undermine the electoral process (Norris, 2013). Indeed, elections are competitive to the degree that they are virtually fraud free (Lopez-Pintor, 2010; Darholf, 2011; Vickery & Shein, 2012).

In contrast to Lindberg, I determine competition by the absence of electoral malpractices such as tampering with the voters list, ballot papers or election results, vote tallies, the payment of commission on any services rendered by electoral officials or other groups which have altered electoral outcomes, commitment – oral or writing – on future benefits including a contract or appointment, reported cases of the offer of petty cash, the selective application of party and candidate rule and the use of violence to change electoral results in addition to vote share thresholds. Like the measure of participation I add to this an objective measure which is calculated as  $(100 - [\text{winner's percentage of presidential votes or legislative seats} - 2^{\text{nd}} - \text{place percentage share of votes of legislative seats}]/100)$  the result of it is equal to 1 and reflects perfect competition and perfect uncompetitive election if it is 0 (Table 3.5, column 3).

Lastly, a legitimate election is characterised by the absence of state repression, either through the use of the police or other instruments of coercion such as ‘engaged thugs’.<sup>6</sup> Indeed, state repression and political intimidation affect elections and electoral outcomes in various ways. It can alter the quality of voter lists, diminish voter turnout, provoke the withdrawal of key contenders and damage electoral outcomes (Fabrice, 2003; Ozor, 2009). For instance, the opposition leader in Uganda was arrested and charged with treason in the build up to the 2006 general elections. It is claimed that this was the immediate cause of the protests and riots on the streets of Kampala (Ozor, 2009). In this regard, I measure the legitimacy of an election using three indicators. Firstly, when the losing candidate/party accepts defeat/winner accepts major flaws. Secondly, when citizens, observers, partisan/non-partisan election stakeholders endorsed elections as credible, and peaceful and the election recorded less cases of abuse of state institutions, including the arrest of key politicians, unnecessary charges against political opponents or the use of hired political thugs to intimidate voters or the opposition. Lastly, I also accept fewer electoral petitions as an indicator of a good election (Table 3.5 column 4).

#### *a) Pattern of Democratic Elections in Nigeria*

Democratic elections are participatory when each individual as a voter or candidate is given an equal opportunity to take part in public affairs without discrimination. Thus, taking from the two broad theoretical dimensions of popular participation – frequency and intensity, when an election fails to give individual participants the chance to be registered as a prospective voter, it has

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<sup>6</sup> These groups are often made up of unemployed youth, school dropouts, and those who have not received any formal education. They are used by the ruling and opposing candidates or parties to protect the political interests. Different terms and terminologies are employed to describe them e.g. ‘*yan daba*’ seems the most common in the country. They are called ‘*yan kalare*’ in Bauchi and Gombe, ‘*yan sara suka*’, ‘*yan jagaliya*’ in Kano, ‘*ECOMOG*’ or *SAS* – Senator Ali Madu Sheriff – Super Youths in Borno.

undermined their right to participate. In other words, in a country like Nigeria where a person is only allowed to vote when registered as a voter, controlling the registration process means controlling people's frequency and intensity of participation.

In terms of intensity, understood as the partial power given to citizens to influence decision-making (Katz, 1997), the 2007 elections failed to guarantee people's right to participate, because, as we shall see, the electoral commission failed to provide adequate registration materials nationwide and thus, the registration exercise disenfranchises almost 10 million people (refer to Table 3.1).

*Table 3.6 Presidential Elections Voter Turnout 2007 & 2011*

Year	Voter Turnout	Total Vote	Registration	VAP Turnout	Voting Age Population	Invalid Vote
2011	53.68%	39,469,484	73,528,040	48.32%	81,691,751	3.19%
2007	57.49%	35,397,517	61,567,036	49.85%	71,004,507	-

*Source:* INEC 2007 and 2011 Presidential election & IDEA, 2011 Nigeria's presidential election result results

In addition, the list has numerous cases of multiple, underage, phantom and deceased entries which make the register a potential virus that infects the overall elections.<sup>7</sup> In contrast, the 2011 voter registration exercise set in motion the required machinery to clean these inconsistencies. The Commission registered over 73 million voters which is far beyond its projected 63 million voters (INEC, 2011; PSC, 2011; NDI, 2011; EU EOM, 2011). As explained before, this was after The Commission expunged a significant number of multiple and minor registrants.

<sup>7</sup> See Chapters Four and Five for an in-depth analysis.

It could be argued that the 2007 presidential elections, for example, registered more participation than the 2011 presidential elections as the former had a 57.49% voter turnout against 53.68% (Table 3.6). While this appears to be true, the authenticity of the 2007 national voter list casts doubt over this result. This is in addition to the fact there are two different types of result. One indicates 35, 397 and 517 as the total valid votes cast in which the winner and second runner scored 69.60% and 18.66% of the total votes (Table 3.6) and another which shows 35, 425,208 as the total valid votes cast in which the winner and the second runner scored 69.96% and 18.65% respectively.<sup>8</sup>

Similarly, when the frequency of participation is narrowed to elections, the assumption is people ‘.... may value voting as a procedure for making a collective choice’ (Przerworski, 2010, p.111), thus, the focus is on the extent to which people exert influence over who occupies what position. Although voter turnout is used to measure participation, Table 3.7 indicates this as a weak measure.

*Table 3.7 Measuring of Effective Participation*

	<b>Elections</b>	
	2007	2011
Average voter turnout	57.49%	53.68%
Effective Participation (President)	0.4985	0.4799
Effective Participation (Congress)	-	0.2579

*Source:* Author’s compilation<sup>9</sup>

The Table shows that both the 2007 and 2011 elections have roughly the same voter turnout (57.49% and 53.68%), which are all below the African average of 64.6%<sup>10</sup> and therefore not in

<sup>8</sup> See Appendices A4 a & b.

<sup>9</sup> Elections results collected during fieldwork.

<sup>10</sup> Calculated from 1990-2011 using the data provided in Table 2.2 of (Bratton, 2013, p.29).

any way different. However, when I introduce the last measure of effective participation, the result provides some interesting insights. It shows both the 2007 and 2011 elections to be poor in terms of participation, with each falling below 0.5 during the presidential elections. Also, the fact the 2007 election had a little difference with 2011 did not indicate in any significant way a better quality election. In fact, efforts to get the total number of valid votes cast during the legislative elections proved unsuccessful. Therefore, the scores for effective participation in 2007 were not available, while those of 2011 show insignificant citizen participation (0.26). Thus, this confirms that turnout is not a valid measure of participation, especially considering that factors like positive inducements of patronage and negative sanctions of coercion are at play in many African states (Bratton, 2013, p.29; Centellas, 2011).

Secondly, multiparty competition is the hallmark of most modern democracies (Diamond & Morlino, 2005). Although dominant party systems throw up different issues, we can say that in most multi-party elections, competitiveness is an important indicator of the quality of the election. This may be especially important in states which are emerging out of prolonged years of one-party or military rule. In such societies, it is often difficult for the opposition to play to their optimal capacity as the electoral terrain is skewed by either the electoral processes or overall electoral institutions. In this regard, a credible election offers contestants a fair chance to compete. In other words, the presence or absence of competition among contestants is one useful indicator of the quality of an election. Therefore, when an election records severe cases of outcome determinative frauds and second order malpractices, the result could be uncompetitive elections even if they record high vote shares. A careful examination of the 2007 and 2011 elections in Nigeria indicates

the latter is more competitive than the former. For example, the 2011 presidential elections appear to have recorded more competent opposition than the 2007 presidential elections.

*Table 3.8 Nigerian Voter Turnout in the 2007 & 2011 Presidential Elections*

Candidate	Party	Votes	%
2007			
Yar'Adua	PDP	24, 638, 063	69.60
Buhari	ANPP	6, 605, 299	18.66
Atiku	ACN	2, 637, 848	7.45
Mojisola A. O.	MMN	4, 309	0.01
2011			
Jonathan	PDP	22, 495, 187	56.99
Buhari	CPC	12, 214, 853	30.95
Ribadu	ACN	2, 079, 151	5.27
Christopher C. N.	LDPN	8, 472	0.02

*Source:* Author's compilation

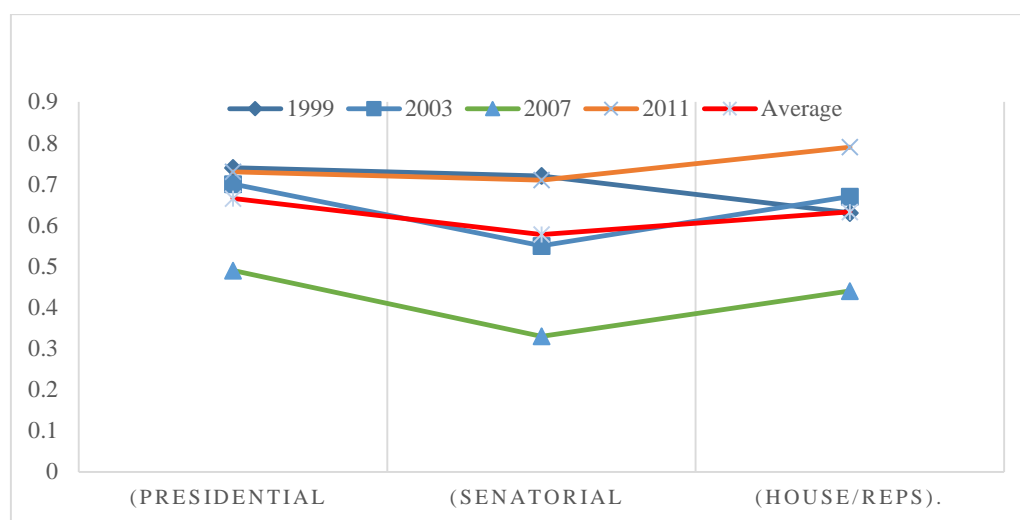
Table 3.8 demonstrates that the ruling party – PDP dominates the elections, winning an absolute majority (70%) of the total votes cast in the 2007 elections, while the entire opposition (24 political parties that contested the elections) shared the remaining votes (30%). On the contrary, the extent of competition in the 2011 election indicates that despite PDP's overwhelming majority, the second runner alone scored a significant proportion of the votes cast more than what all the oppositions scored in the 2007 elections (31%).

However, this does not narrate, significantly, the extent of the competition between individual actors – candidates or parties. In fact, using the formula to measure political competitiveness, Figure 3.1 shows that the 2007 elections had the lowest average competitiveness compared to all elections conducted in the country since 1999. This indicates that the 2007 presidential election is



less competitive compared to the 2011 election and has fallen far below all other elections, the national and continental averages (0.76 and 0.59).<sup>11</sup>

*Figure 3.1 Electoral Competition in Nigeria (1999 – 2011)*



*Source:* Author's compilation

The quality of the competition was so poor that the legislative elections were almost close to being perfectly uncompetitive (0.3) for the Senatorial and (0.4) for members of the House of Representatives. This confirms that all those who contested and won both as president or a congress member in the 2007 election did so comfortably and all losers whether second place or otherwise only established a presence among the voters during elections (Bratton, 2013; p.24).

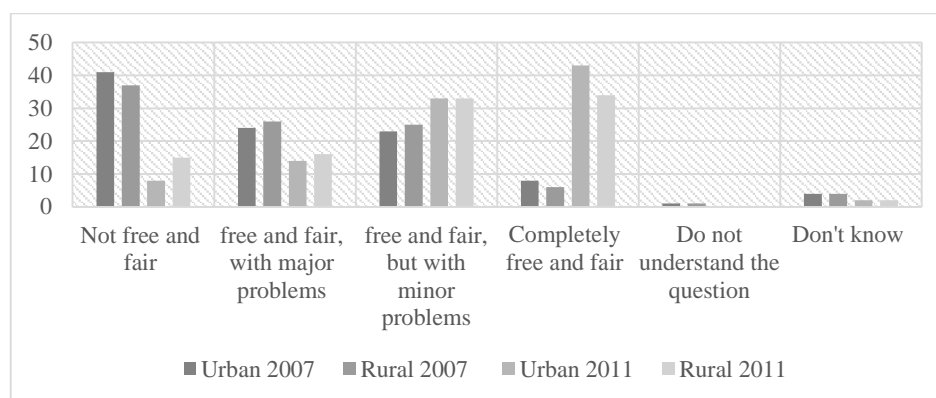
On the other hand, we can confidently argue that those who contested and won their seats in the 2011 elections either as president or a member of congress have faced more challenges. Put differently, the 2011 Presidential, Senatorial and House of Representatives elections are more

<sup>11</sup> I calculated the national average using the elections conducted in the country from 1999 to 2011 and the continental average using Bratton's figures provided in Table 2.1 (2013, p.23).

competitive than the 2007 elections as they were close to a perfect competition (0.73, 0.71 and 0.79 respectively). The scores are almost equivalent to what is obtained in established democracies. If it were not for the observed cases of irregularities that trailed the elections during the campaign, polling and post-polling day, the presidential elections would have been a near perfect competition.<sup>12</sup>

Lastly, a democratic election needs to be perceived as legitimate. Evidence indicates that the 2011 election was more peaceful and well administered than the 2007 election. This is despite the presence of some forms of irregularities and abuse of state powers. All the sources consulted seem to agree that the 2011 elections were more peaceful and have recorded more acceptable results than the 2007 elections, and only the opposition appears unconvinced regarding the perceived legitimacy of the 2011 elections.

*Figure 3.2 Perception of Free and Fairness of 2007 and 2011 Elections*



*Source:* Afrobarometer Round 4 (n = 2,324 weighted results) and Round 5 (n = 2,400 weighted results)<sup>13</sup>

<sup>12</sup> Chapter Five looks at this in detail.

<sup>13</sup> The survey asked respondents about the freeness and fairness of the last election.

This is in contrast to the 2007 elections which all sources described as ‘failed elections’, including the opposition. In fact, the 2011 elections were perceived as free and fair by the majority of rural and urban dwellers in Nigeria (Figure 3.2). The figure indicates that the majority of Nigerians (43% of urban and 37% of rural dwellers) rate the 2007 elections as not free and fair and a significant majority (43% of urban dwellers and 34% of rural dwellers) agreed that the elections were completely free and fair. Overall, it is clear that the majority of Nigerians rate the 2007 elections as poor and the 2011 elections as free and fair. Moreover, some politicians despite losing in the elections accepted the results declared by INEC. For example, the former Speaker of the Federal House of Representatives accepted the elections as a true reflection of the wish of the people while commending the peacefulness of the process.<sup>14</sup>

### *3.4 Explaining Democratic Quality of Elections: The Electoral Governance*

What are the immediate factors that affect the conduct of democratic elections? Knowing the numerous factors necessary for good elections could provide hints toward its understanding. As indicated earlier (in Chapter One), the literature on hybrid regimes emphasises the relevance of electoral administration in explaining the quality of electoral contests (Diamond, 2002; Banducci & Karp, 2003). In particular, reference has been made to how election management has fallen short in the application of rules, the compilation of comprehensive voter lists, the handling of the opposition, and balancing the use of public media and state resources in transitional regimes (Bratton & van de Walle, 1997; Banducci & Karp, 2003; Calingaert, 2006; Levitsky & Way, 2010). Electoral governance involves the design and supervision of the entire official framework

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<sup>14</sup> See Vanguard, April 10<sup>th</sup>, 2011.

under which polling and canvassing for votes take place (Mozaffar & Schedler, 2002, p.7). In practice this covers the coordination of activities from pre-election, through electioneering and polling, to the period when winners are announced and disputes settled.

In both old and new democracies, both marginal and deliberate mismanagement of elections occurred during these periods. In the USA, for example, there were allegations of ballot suppression during the 2000 presidential elections in Florida as there were established cases of the blocking of postal votes and its subsequent change in favour of the Labour Party in the 2004 local elections in Birmingham (Mills, 2002; Stewart, 2006). Similar examples or even worse examples (as I shall demonstrate later) are obtainable in transitional democracies like Nigeria. However, one could argue that other factors such as external support and prior experience with democracy can influence an election's quality (McCoy & Hartyln, 2009), especially considering that international influence, the collapse of authoritarian regimes and turnout have been found to have a significant correlation with democratisation (Levistky & Way, 2010; Roesser & Howard, 2009; Lindberg, 2006; 2009).

While the influence of these factors cannot be disregarded, there is growing concern about the influence of electoral governance on democratic elections. For example, recent studies on democratic elections in Africa highlight the relevance of electoral governance in explaining electoral quality (Bogaards, 2007, 2013; Bratton, 2013; Morse, 2012). Electoral governance is the general rules and regulations and institutional arrangement that design and supervise the entire processes of party and candidate registration, polling and canvassing for votes (Mozaffar &

Schedler, 2002). This covers the coordination of activities from the pre-election period, electioneering, polling, winner declaration and resolution of all disputes arising therefrom.

In Nigeria, these activities are handled by the INEC and electoral courts or tribunals. Therefore, the way and manner these institutions operate affects the elections.

*Table 3.9 Electoral Governance and Democratic Elections*

Assumption	Explanatory Variable
H <sup>1</sup>	Autonomous electoral commission
H <sup>2</sup>	Well managed electoral cycle
H <sup>3</sup>	Mechanism of dispute resolution

Table 3.9 suggests that election quality depends on the autonomy of the electoral authority which plans and executes elections (H<sup>1</sup>), successful management of the electoral process (H<sup>2</sup>) and impartiality and expedited resolution of electoral disputes (H<sup>3</sup>).

*a) Autonomy of Electoral Authority*

In the build up to every election politicians – incumbents and the opposition – engage in different activities, fair or foul, to see election results return in their favour. Bribery, intimidation and vote buying are common practices at polling booths. Miscalculation and the alteration of vote scores and garrison declaration of losers as winners are common forms of fraud documented at ward, local, state/region/province and national levels. At higher levels of electoral administration the struggle includes the strategic installation of party stewards to serve as chief electoral officials. Consequently, political actors do not trust each other or the institution that manages elections. Indeed, observed partisanship of electoral umpires can nurture distrust and give ‘... losers the basis

to think that the votes are fraudulent (Bratton, 2013, p.137). In this context, the independence of electoral commission in many transitional regimes came to dominate electoral integrity discourse.

Some focus on the autonomy of electoral management bodies (EMBs) in terms of the process of recruitment and composition of its members. This group insisted that the autonomy of EMB is measured by the partisan and non-partisanship of its members and their independence from the appointing agency. Accordingly, they proposed two models: the model of ‘ombudsman and party-watch-dog’ (Hartlyn, McCoy, & Mustillo, 2008; Birch, 2011). Others maintained that the relative autonomy of electoral agencies depends on where they are situated within the formal setup of government. In this manner, three categorises of EMBs are identified - non-autonomous, semi-autonomous and fully autonomous EMBs (Mozaffar, 2002). In addition, a multiparty model, which is similar to a party watchdog, is suggested (Pastor, 1999). These models while significant to the understanding of electoral politics appear biased toward bureaucracy (Makulilo, 2011), neglecting other significant attributes of independence of EMBs. For example, what happens to the operational and logistics arrangements of EMBs when they are faced with an acute shortage of funds or late disbursement? Is there any legal barrier to the proper functioning of EMBs? What is the effect of the absence or partial administrative powers of EMBs in discharging its legal mandate? Indeed, scholars such as Hall, Monson & Patterson (2009) show that since elections require the coordination of hundreds of individuals engaged in hundreds of different activities, the quality of the ad hoc poll staff often recruited on a temporary basis cannot be underestimated. Equally, Alvarez and Thad (2008) point to the relevance of efficient voting procedures, legal power and the functions of the electoral commission and its budgetary capacity.

To determine the autonomy of the EMB in Nigeria, I use the professional model as that is what is in operation in the country. I examine who appoints, what the requirements are for the appointment, and how long the tenure is of all electoral commissioners. I also look at the commission's operational powers and functions, as even when experts are appointed they are to work within the purview of the law. This includes looking at its ability to make and implement decisions independently of outside influence, its openness to all political contestants and other non-partisan interests and its operational efficiency. I then look at its financial capability. The assumption is that the electoral body is independent when it has an uninterrupted source of funds with relative or no excessive bureaucratic or regulatory fiscal policies (Table 3.10).

*Table 3.10 Autonomous Electoral Commission*

	<b>Institutional autonomy</b>	<b>Operational powers/functions</b>	<b>Financial autonomy</b>
Independent EMB	Who appoints What is the criteria for appointment Appointment requirement Tenure of office	The ability of EMB to make and implement its decisions Openness of the EMB to partisan and nonpartisan actors Procedural and logistical efficiency	Availability of funds Uninterrupted source of funds Relative or no excessive use of bureaucratic or regulatory fiscal policies Late release of approved funds

*Source:* Author's compilation

Indeed, budget is the best policy tool that defines organisational goals and successes (López-Pintor, 2000, p. 79).

Although there are other factors that impede the proper functioning of the EMB in Nigeria, empirical evidence indicates these three are the most pertinent. For example, successive electoral commissions in the country have expressed concern about these obstacles. In particular, in its 2003 election report, INEC mentioned that from 2000 up till the 2003 elections, funding has been the

basic challenge faced by The Commission (INEC, 2004, pp.69-70; ERC, 2008, p.99). Similarly, a former chair of The Commission revealed that The Commission is constrained by the 1999 Constitution to properly discharge its functions.<sup>15</sup> However, the institutional autonomy of electoral authority alone does not guarantee election quality, as shortcomings in any election sequences can compromise basic standards.

#### *b) Electoral Process*

It has been argued that incumbents use various means to manipulate electoral outcomes (Gandhi & Lust-Okar, 2009). Perhaps this explains the number of allegations of fraud in various countries. Recent examples include the registration of some 142 voters at a single address in Malaysia,<sup>16</sup> the validation of voters by ZANU-PF headsmen before voting in rural Harare and Chitungwiza (Dorman, 2006), the 330% increase recorded in the Ashanti region of Ghana during the 2008 voter registration exercise (Jockers, Kohnert, & Nugent, 2009), the practice of vote buying which offers party agents in Egypt the privilege of accompanying voters into the polling booth and ensuring that they voted for their party in the 2005 presidential elections (Calingaert, 2006, p.144) and the imposition of the incumbent's anointed candidate on the ruling Kenya Africa National Union (KANU) in the 2002 presidential elections (Cheeseman, 2008; 2010). In this regard, I expect a good election to have neutral and effective electoral logistics, candidate nomination, electoral campaigns and media accessibility, a voting process, counting and result announcements. Once

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<sup>15</sup> (Guobadia, 2000).

<sup>16</sup> Yoon Szu-Mae, Mar 8, 2004. *Election watchdog: Electoral roll tainted, postpone polls*. Available online: <http://www.malaysiakini.com/news/18954> (Cf. Calingaert, 2006).



significant progress is observed, there is the possibility for the outcome to be authentic (Alvarez & Hall, 2008).

To evaluate impartial and effective electoral logistics, I concentrate on the extent to which the electoral processes ensure the supply and provision of sufficient and accessible registration/polling units, whose location is well advertised and accessible to each at convenient time (Birch, 2011). In other words, to guarantee an individual's right to vote electoral logistics should ensure that every eligible voter votes at the appropriate time by making the registration/voting procedure easy, simple and possible for all.

*Table 3.11 Impartial Electoral Cycles*

	<b>Neutral &amp; efficient logistics</b>	<b>Impartial candidate selection</b>	<b>Fair campaign &amp; media coverage</b>	<b>Secure voting</b>	<b>Even counting and announcements</b>
Electoral process	Easy and simple registration and voting Simple design of ballot paper Provision of adequate and well trained ad hoc electoral officials Voter education and mobilization	Absence of undue influence of party baron/incumbents over selection Even treatment of all contestants Fair relationship between the ruling party and other parties	Accessibility of public places for campaigns by all candidates Absence of the abuse of state resources in favour of an incumbent candidate or party Fair media reportage and campaign slot	Adequate provision and supply as when due of all voting material Observance of voting regulation by all partisan and non-partisan actors Protection of ballot papers, boxes and results sheets with serial numbers, coding – including colour coding Accountability of all voting materials including used and unused ballot papers, valid and invalid	Transparency and accuracy of counting and tabulation Partisan and non-partisan observation Openness of the process to public scrutiny

*Source:* Author's compilation

Also, 'ballots must be designed and explained [to all] such that all sectors of the population can use them effectively without undue difficulty' (Birch, 2011, p.22). The term 'undue difficulty' indicates not only the opportunity to vote freely but extends to all forms of unnecessary delays

such as the failure to provide adequate registration and voting materials, the use of inexperienced permanent and ad hoc staff and the failure to conduct voter education (Table 3.11, column 2). Indeed, an election is regarded as democratic when it provides all adults with the chance to participate in the selection of those to occupy positions of power (Goodwill-Gill, 2006).

Further, nomination is pivotal to explaining the democratic quality of elections. Except the formal requirements of qualification and registration, candidates and parties should have an equal opportunity to present themselves for elections without discrimination in terms of gender, religion, identity or social status (Goodwill-Gill, 2006; Birch, 2011). That is the electoral process has to ensure that candidate selection is not unduly influenced by party barons or the abuse of incumbency. This is because ‘incumbents can engage in direct pre-electoral interventions to limit the entry of and support for opposition candidates, vetting candidates and limiting their abilities to campaign’ (Gandhi & Lust-Okar, 2009, p. 413). This means political parties have to uphold internal party democracy and offer equal opportunities to all political aspirants. Similarly, the nature of the relationship between and among political parties in the process of nomination is expected to be cordial, each promoting fairness without discrimination (Table 3.11, column 3).

In addition, democratic elections require a neutral electoral campaign. The campaign period is critical to credible elections. It is the point at which all basic political, civil and social rights and freedoms come into play. Therefore, the extent to which an election remains open, impartial, peaceful and neutral is determined by how people exercise their rights and freedoms of movement, expression, assembly, association and communication (Table 3.11, column 4). In fact, severe restrictions and deliberate favours ruin electoral integrity (Goodwill-Gill, 2006) and incumbents

can hijack government owned media, controlling the flow of advertisements and other information, making it difficult for the opposition to operate effectively (Gandhi & Lust-Okar, 2009).

Similarly, voting day is busy, hectic and tense, such that a minor error or a misuse of discretion can trigger suspicion, mistrust and violence, destroying long-term investments and planning. Therefore, secure voting is strategic to a credible poll. Also, ballot papers are sensitive materials and require maximum security from their production, supply on the polling day to their retrieval after polling. This is required more in emerging democracies where the line between political and socioeconomic advancement is blurred.

Therefore, the adequate supply and distribution of voting materials and the observance of voting regulations are prerequisites. In addition, the presence or absence of security features such as colour coding and the serialisation of the ballots as well as physical security during voting are good qualities that can reduce fraud and ensure credibility. In genuine elections, all ballot papers and boxes must be accounted for. All used, unused, destroyed, cancelled, spoiled, valid and/or invalid ballot papers have to be accounted for and returned (Table 3.11 column 5). Indeed, a polling day has zero tolerance to flaws (Alvarez & Hall, 2008).

Lastly, elections lose integrity when vote counting and result announcement is mishandled. It is said that all votes must be accurately counted with equal weight – on the scale of one person to one vote and reported accurately (Birch, 2011). Thus, basic requirements are transparency, accuracy and non-discrimination in result collation and tabulation. The presence of partisan and non-partisan observation including security agents minimises computation errors, especially when each takes a separate result tally. Also, the provision of duplicate copies of results to party agents

and pasting the same outside the polling ward, constituency, local government and state collation centres enhances electoral transparency and credibility (Goodwill-Gill, 2006). However, the proliferation of mobile hi-tech smart-phones is seemingly influencing this process. Now people can instantaneously capture and tweet or transmit election results before the returning officer has submitted the hard copies. But social media and other communications technology might also be used to disrupt fair electoral processes and short-change opponents.

Note that these essentials varied in the literature. For those looking at ‘free and fair’ elections, the ten components of electoral law and system, constituency delimitation, election management, right to vote, voter registration, civic education and voter information, candidates, political parties and political organisation, including funding, electoral campaigns including protection and respect for fundamental human rights, political meetings, media access and coverage, balloting, monitoring and results, and complaints and dispute resolution are visible (Goodwill-Gill, 2006). Those who felt ‘free and fair’ is a fluid concept which defies analytical clarity had between 11 and 12 elements: The above ten plus an electoral procedure and/or vote count/result declaration (Elklit & Svensson, 1997; Elklit & Reynold, 2002, 2005). Using the selective approach (as discussed in Chapter One) I discarded item one as literature on the effects of electoral systems abound and since the two elections (2007 & 2011) under consideration were conducted under the same majoritarian system, electoral system is less relevant. However, future studies might look at the quality of representation and the value of votes under such an arrangement. Similarly, data on constituency delimitation and campaign finance remain a challenge to track even established democracies (Norris, Frank, & Coma, 2013) and are therefore exempted from the study.

c) *Electoral Dispute Resolution*

Elections usually create discontent. While internal party resolution and out of court settlement mechanisms seem effective in managing election grievances, not all prove to be effective.<sup>17</sup> In Nigeria, aggrieved parties, candidates and party members continue to seek redress in various courts. Others filed and continue to file complaints against organisational and operational lapses. Typical examples are the suits filed against the barring of several governorship candidates by INEC in the 2007 and 2011 elections. It has been argued that an important safeguard of election integrity lies in an effective resolution of complaints (Vickery, 2011, cf. Wood, 2008). However, measuring the effectiveness of electoral dispute resolution is a difficult task. Empirically, it requires efforts to establish the different measures of a citizen's right to participate in governance which has never been easy. However, election as a process that embodied human rights requires the placement of each individual either as a candidate or voter on an equal scale. Such a mechanism is efficient to the degree that it ensures electoral outcomes that reflect people's choices.

To achieve this goal, growing interest in how to measure the efficiency of electoral resolution suggests seven essentials of electoral dispute resolution. First, electoral resolution has to detect and deter fraud. This necessitates the setting up of different strategies to protect the vote. Second, the optimal achievement of right to redress is contingent upon a standardised electoral procedure. This is to keep track of alleged faults and quickly mitigate their effects. Fraud detection, therefore, requires that the chain of custody be protected from head to toe so that a proper electoral autopsy can be performed when the need arises (Alvarez & Thad, 2008). Third, the electoral judgements

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<sup>17</sup> Out of court settlement can render electoral adjudication ineffective. It has destroyed the might of the Zimbabwean and Kenyan opposition (Cheeseman, 2008).

reached between contending parties acquire value when people trust the arbitrator. Fourth, election dispute resolution has to be expeditious as elections are time constrained. Fifth is to set a measurement for who is to provide evidence to assert a claim. Sixth, a good mechanism for electoral dispute resolution has an established penalty for offenders. Therefore, the moment an election of Mr 'A' is nullified there shall be the immediate commencement of a penalty. For example, in the UK after establishing that the 5 councillors of Aston and Bordesley wards were all guilty of fraud, the court barred them from standing for any public office for 10 years and from voting in any election for 5 years. Consequently, 5 councillors: 3 from the Liberal Democratic Party and 2 from the People's Justice Party won the by-elections. Also, effective dispute resolution requires a chance to appeal so that justice prevails among contenders. In fact, it was through an appeal that a councillor among the 5 councillors above reversed the guilty verdict pronounced against him (Stewart, 2006). Lastly, an electoral complaints procedure must ensure that electoral stakeholders such as political parties, candidates, lawyers, civil society organisations and the media are familiar with the established procedures (Vickery, 2011, pp. 11-95).

However, to examine the effectiveness of electoral resolution in Nigeria, I focus on the impartiality and experience of the arbiter, speed or expeditious of the process, and the standard of evidence and burden of proof. These three are the most essential factors that frequently appeared in the literature about Nigerian electoral dispute resolution (Okoye, 2009; UNODC, 2003; Abdurazaq, 2005; ERC, 2008; LDC, 2009). Also, the majority of complaints and reservations expressed by different reports and personalities consulted point to these issues (*Lar vs. Kadiya* 1983 (2004); Haruna, 2008). Further, I tried to integrate effective methods of fraud detection and standardised electoral procedures in the analysis of impartial and efficient electoral processes.

In this regard, I measure the extent of neutrality by looking at who appoints, promotes and controls the welfare of the judges that adjudicate electoral disputes. In addition, the impartiality of courts is secured when it is financially protected. The experience of judges is determined by looking at the presence/absence of any training and other professional requirements expected of a good arbiter. The treatment of cases on merit of as against technicalities is an indication of an experienced electoral arbiter. Also an experienced judge will be vast in other fields such as politics, mathematics, statistics and technology. The transparency of the process from the appointment of judges to the point when a judgement is reached is another valid indicator of impartiality which builds confidence (Table 3.12 column 2).

Indeed, in transitional regimes ‘controlling the judges can be the easiest way of controlling electoral outcomes’ and an independent electoral litigation can redeem deliberate electoral failures (Mozaffar & Schedler, 2002; Eisenstadt, 2002). Indeed, numerous conventions recommend the establishment of an impartial and informed arbiter (Vickery, 2011; *ICCPR article 14*).

*Table 3.12 Effective Electoral Dispute Resolution*

	<b>Impartial and inform arbiter</b>	<b>Timeliness</b>	<b>Burden of proof and standard of evidence</b>
Effective dispute resolution	Who appoints, promotes and controls the welfare of judges Financial autonomy of the judges and courts Experience of judges in terms of qualifications and training	Speedy trials Absence of undue delays and adjournment Presence of a workable timeframe within which to conclude trials	Who provides what evidence Presence of clear and convincing or what is called substantial evidence

*Source:* Author’s compilation

Also a complaint challenging an outcome requires urgent attention and a speedy trial. In theory and practice, electoral mandates are the defining components of legitimacy to govern within a

stipulated period. In other words, electoral mandates are inherently time constrained. Therefore, I consider as effective electoral dispute resolutions when judges are given a realistic timeframe to guide and aid their decisions and when the trial is not prolonged by undue delays or adjournments (Table 3.12 column 3). This is achievable when electoral laws are tailored towards simplicity and the court is adequately equipped to discharge its responsibilities (Vickery, 2011). Timeliness however, does not mean haphazardness. Thus, the expeditious handling of electoral complaints should not compromise a fair hearing and due process.

I examined the burden of proof and standards of evidence by looking at the legal requirements of who is to provide what evidence. The prevailing tradition is ‘... the necessity of proof always lies with the person who lays the charges’ (Vickery, 2011). However, instances do arise when electoral bodies are required to prove that the results declared are authentic. This is perhaps based on the consideration that the accuser might be in a disadvantaged position to prove his case and sometimes the accused, usually incumbents, might have sat over valid evidence to assert the authenticity of results (Vickery, 2011). A similar argument is that the electoral commission, as the custodian of election materials and the institution that makes the declaration, shall provide evidence that asserts its declaration (ERC, 2008). Valid as these arguments are, the burden of proof remains the duty of the petitioner and clear and convincing evidence is what prevails concerning the standard of evidence in the world over (Vickery, 2011, p.62).



### 3.5 *Data Collection, Analysis, Measurement Validity*

#### *a) Data Collection*

Data on the operationalised variables is collected from primary and secondary sources.<sup>18</sup> The primary data fits the research question and it is relevant and available in the form of field observation reports compiled by election observers. The reports are of two types: domestic and foreign observer reports. This dichotomy provides an effective way to cross-check information reliability as the neutrality of election observation is debatable. However, their role in uncovering and preventing electoral fraud, supporting and strengthening the basic standards of elections and electoral administration is well acknowledged (Cathorers, 1997; Kew, 1999; Dorman, 2006; Bratton, 2013). Indeed, it is argued that there are strong data on the quality of elections and political rights from numerous sources, including election observers that can allow researchers to make better judgements about election integrity (Morse, 2012).

Therefore, to examine the democratic quality of the 2007 and 2011 elections, data for the dependent and independent variables are collected from diverse sources. On the domestic side of election observation, I selected three reports for each election. The first is the compiled election report by INEC. The remaining two are compiled by two domestic observers. For the 2007 election, the report of the Transition Monitoring Group (TMG) provides significant insights. The group had various committees that cover almost all the aspects of the elections. These include the

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<sup>18</sup> Data is primary when it occurs in its original and unedited form or generated from a semi-natural setting and secondary when it is edited and in an interpreted form (Ritchie & Lewis, 2003; Pierce, 2008; Blaike, 2011; Lijphart, 2006; Stake, 2010).

Political Party Monitoring, Election Sensitisation and Mobilisation, and Voter Registration and Election Monitoring Committees (TMG, 2007, p.30).<sup>19</sup> The second is compiled by the Legal Defence Centre (LDC). The report has an extended scope that covers the period of electoral dispute settlement. It deployed 37 trained monitors who cover the activities at all 36 electoral tribunals including the one in Abuja from filing, through pre-trial and to the actual hearings and resolutions (LDC, 2009, 6).<sup>20</sup>

Four reports are considered for the 2011 elections as I could only access one domestic observer report, because almost all active domestic observers formed a single consortium called Project Swift Count (PSC) which includes the Federation of Muslim Women's Association of Nigeria (FOMWAN), TMG, the Nigerian Bar Association (NBA), and Justice, Development and Peace/Caritas (JDPC). PSC deployed 9,000 observers to monitor the 2011 voter registration and elections. Each field officer transmitted instant coded messages from the field via his mobile phone to the situation room in Abuja (PSC, 2011). To supplement this shortage, I considered two commissioned reports: the Voter Apathy Report compiled by INEC in collaboration with Friedrich-Ebert-Stiftung (FES) and the Registration and Election Review Reports (RERC).<sup>21</sup> The former is a qualitative study of voter apathy in Nigeria and has a sample size of 1,200 selected from 12 states, and 27 local governments covering 43 rural and 60 urban wards.<sup>22</sup> The latter was given a free hand to operate and report on all electoral activities in the 2011 elections by INEC.

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<sup>19</sup> Details of the deployment are included in Appendices 1 & 2 of the said report.

<sup>20</sup> Details of the deployment are included in Appendix 12 of the report.

<sup>21</sup> The RERC report is available at [www.inecnigeria.org](http://www.inecnigeria.org).

<sup>22</sup> This document is available in the [Voter Apathy Report](#).

On the foreign side, I used two reports compiled by the European Union (EU) and the National Democratic Institute (NDI) for both elections. The reports provided detailed accounts of the two elections. The reports are relevant in that each covered specifics of the elections, including the legal frameworks and some aspects of electoral litigations. Equally, they are more comprehensive than any other report including the Africa Union (AU) report. In fact, other foreign bodies appear to have collaborated with these two while issuing press statements. For instance, during the 2011 elections, the International Republican Institute (IRI) together with EU and NDI concluded that the electoral commission has made considerable preparations to ensure democratic elections to date (Press Release, March 31<sup>st</sup>, 2011). Many had short briefings that are not rich enough to be utilised. The AU, for instance, only covered a few activities in its 6 page report of the 2011 election. This is incomparable to the reports of the EU compiled by 137 and 141 field election observers and NDI's 61 and 64 field election observers in the 2007 and 2011 respectively.

Election observers can be biased and may endorse bad elections as good. Moreover, their over reliance on polling day activities, relative autonomy, political linkages and the influence of host state have led many of them to pass questionable judgements on integrity. For example, during the 1999 elections in Nigeria, member states of both the Commonwealth of Nations and the European Union required observation teams to "... endorse the elections and restore normal relations with Nigeria" (Kelly, 2010, p.166). The USA maintained that the election is 'the most important election in the world [that] year' (Kew, 1999, p. 30). So, '... the process of observing [is] as political as the election itself' (Dorman, 2006, p. 172 ). To reduce the infiltration of such predispositions, I consulted multiple reports so as to balance the inherent politics. In this way, I triangulated the domestic, regional and foreign observations reports. Also, the use of the

commission's report serves as another form of data authentication. In addition, because observers have a limited timeframe which usually does not extend to periods when electoral petitions are finally determined, I supplemented this gap with media reports on court proceedings, the available court judgements and government reports and publications. This was to obtain enough data to compliment the shortages associated with the last aspect of the analysis – the electoral dispute resolution.

It could be argued that there are other limitations to election observations not captured by the literature. Many observers, for example, are only present in a given country some few days to the elections,<sup>23</sup> thus, limiting the extent of their coverage and missing other preceding electoral activities that could have far reaching effect. While this is true to an extent, some employ the service of other existing civil society groups in the host country or deploy a team of long term observers. For example, the NDI had a team of 12 long-term observers who were deployed in Nigeria from January to May 2011.<sup>24</sup> But domestic observers could be partisan with apparent political lineage or lack the required experience to report basic democratic qualities of an election.

To corroborate and substantiate these sources, I conducted an in-depth interview with some selected individuals. Each was asked to express his/her views on the conduct of the two elections, as good qualitative research makes humans the cornerstone of its interpretation (Stake, 2010). Put differently, when we transformed the responses to numbers, what we actually did was to move the interpretation one step or more ahead of the contextual definition. Thus, I interviewed individuals

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<sup>23</sup> NDI for instance deployed it team much later in the elections – 16<sup>th</sup> – 23<sup>rd</sup> April 2007 and EU EOM only deployed it observation team a month to the 2011 elections – 1<sup>st</sup> March – 21 May 2011 (NDI, 2008; EU EOM, 2011).

<sup>24</sup> (NDI, 2011, p.7).

in their semi-natural settings. The selection is not based on any sampling technique, yet ‘a selection was made’ (Blaike, 2011, p. 171). In other words, respondents are recruited based on the position they occupied in Nigeria’s electoral arena. Accordingly, people that occupied or participated in the conducting of the 2007 or 2011 elections in the country as electoral officials or administrators, contestants or candidates, party officials, election observers or civil society activists, tribunal or electoral court judges/lawyers comprised the research population, from among whom a research sample was selected using purposive sampling. This is purposive as the research required timing and the population for the selection of a category of people.

In total, 23 out of the 28 target respondents were accessed and interviewed. This includes fifteen (15) extensive in-depth interviews with five electoral officials, two opposition party officials and one candidate, five civil society activists, one tribunal judge and one lawyer. They shared their respective experiences, views and assessments of the legal and institutional framework of the elections, the general conducting of the elections from party primaries to electoral dispute resolutions. Responses were recorded either by note taking or recording depending on the respondent’s choice. No standard questions were designed, but an effort was made to ensure that all important leads were followed, especially those relevant to the research questions.<sup>25</sup> Similarly, where a gap in the data was identified either during transcription or analysis, efforts were made to contact the relevant respondents or others who could help to fill in the blank. Such contacts include three extensive discussions with a former electoral commissioner during the 2<sup>nd</sup> Republic and member of the Electoral Reform Committee and two retired civil servants. Also, telephone calls

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<sup>25</sup> See Appendix A5 for a sample of the recurrent interview questions. Note that these questions do change depending on the circumstances, nature and position of the respondents as well the emergence of important leads.

and emails were made and sent and exchanged with three INEC officials: one at the Electoral Institute and two at the INEC state offices and federal civil servant. Therefore, to bridge the gap, I consulted the available print or electronic media sources which provided some helpful information. Of high relevance are ‘How Governors Rig Elections’,<sup>26</sup> ‘Why PDP Chairmen are the Targets of Conspiracy’<sup>27</sup> and ‘2011: Defection Wave in the PDP.’<sup>28</sup> These sources reduced the bias of the achieved sample and enhanced its appropriateness.

Other primary data include the 2007 and 2011 presidential, 36 states Governorship, 109 Senatorial and 360 House of Representatives election results and the 36 State Houses of Assembly election results for the 2007 and 2011 elections. In addition, I also compiled and used in the analysis the Nigerian presidential and legislative election results from 1979 to the present. This data has helped in strengthening the research capacity in making valid inferences about the quality of the 2007 and 2011 elections in the country. Similarly, several of the court and electoral tribunal judgements and petitions filed and accessed have contributed to the volume of primary data.

The secondary sources include information from academic and independent publications by academic institutes, government and private institutions, political parties, pressure and interest groups, elections and elections related databanks. These include the Carter Foundation, the IFES, Election Integrity Project, IDEA and the Centre for Democratic Development (CDD). Others are conference proceedings on elections by the Centre for Democratic Research and Training (CDRT), Mambayya, Kano and the 2008 Electoral Reform Committee Report. The report had a

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<sup>26</sup> (Duke, 2010).

<sup>27</sup> (Gemade, 2011).

<sup>28</sup> (Akinrefon & Oke, 2010).

considerable data of 1,466 memoranda in addition to 907 representations collected during its public hearings in 12 selected states of the federation. It also had experts' contributions from 11 countries including those of former Nigerian presidents. It is in six volumes – (1) main report; (2 & 3) memoranda and analysis of presentations; (4) verbatim report of public hearings; (5) report on retreats with foreign experts (6) appendices. Moreover, CODESRIA had a special edition on electoral administration in Nigeria.<sup>29</sup> It is among the publications that one of the research respondents recommended to the researcher. Others are election training manuals, reports on mandate protection and lobbying skills dialogues, a review of the majority judgement of the Sokoto State Governorship and Legislative Houses Elections Tribunal in petition No: SS/EPT/GOV/1/08, CEDDERT,<sup>30</sup> and the report on the suppression of evidence by the court of appeal in the case of the Adamawa state Governorship elections in the 2003 general elections, and two Nigerian Electoral Journals by the Nigeria Electoral Institute. Equally important are the manifestos of Nigeria's three major political parties during the elections.

Using the above sources I analysed the democratic quality of elections in Nigeria in light of the perspectives of election observers and interview respondents. I then reconciled the results obtained in the first two empirical chapters with citizens' perception of election quality in Nigeria in the context of the 2007 and 2011 elections using data from rounds 4 and 5 of the Afrobarometer survey on Nigeria. The survey draws data using stratified probability sampling. It has a national representation of 2,324 for 2007 and 2,400 for 2011 adult Nigerians. This allows for an inference of the national population based on +/- 2 margin of error at 95% confidence level for both periods.

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<sup>29</sup> [A Study of the Independent National Electoral Commission of Nigeria.](#)

<sup>30</sup> Centre for Democracy Development Research and Training.

The team conducted face-to-face interviews with the sample population in the language of the respondent's choice. Samples are drawn using the census enumeration area from the geographical composition of the country. It is also based on a gender quota that gives an equal chance of selection to all males and females. The round 4 survey was conducted between from the 13<sup>th</sup> of May to the 25<sup>th</sup> 2008 and round 5 from the 29<sup>th</sup> October to the 30<sup>th</sup> of November 2012.

#### *b) Data Analysis*

Analysis is a process of disintegration and reintegration (Pierce, 2008; Ritchie & Lewis, 2003; Stake, 2010). It is never linear but iterative. An iterative analysis requires the researcher to move up and down the ladder and to look left and right of the data to search for patches of information that communicate a possible pattern of relationship. Therefore, the researcher has to be embedded when searching for every bit of relevant information, either aggregate or interpretive, which can serve as evidence to support his arguments (Stake, 2010). Achieving this requires designing or adopting some analytical protocols. Some *modus operandi* will extract ideas to follow, labels to order, categories to form, patterns to explain and evidence to support or validate suppositions (Ritchie & Lewis, 2003, p. 199) so as to avoid the 'slippage of reliability.'<sup>31</sup>

Analysis, therefore, is the process of the close examination of numerous patches within the data in order to identify significant patterns that can explain aspects of political life (Stake, 2010, p. 133). It is similar to building a renovation where the engineer employs his tools and talent to select from among the old building which asphalt, woods, gypsum, wallboard and paper, glass, plastics,

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<sup>31</sup> For details about the concept of the spillage of reliability see (Lillis, 1999). Also, Adcock and Collier (2001) have provided a detailed examination of how political science research, whether quantitative or qualitative, has to be iterative for findings to be valid and reliable.



roofing sheets and nails could be useful again. In a similar manner the analyst employs research techniques to ensure a valid understanding. Therefore, the 15 in-depth interviews, two extensive discussions, three media conducted interviews, three follow-up telephone calls and six emails, field notes and the 12 election reports constitute the main primary sources of this research.

To ensure openness I analyse this dataset using the analytic hierarchy model developed by Spencer, Ritchie and O'Connor (2003, p.212, Box 8.1). The model has two analytic stages of the data management and descriptive and explanatory accounts. In addition, the second stage can generate a possible third stage of theory building (Pierce, 2008, pp. 177-179). Each stage has some specific tasks to accomplish. The conclusion of each task signals the beginning of the next. In this manner, analytical hierarchy builds on the present substantive meanings of the data with less distortion of its original content. In addition, the model makes it easy to triangulate sources. Thus, the analytic hierarchy model is a systematic process of data analysis that uses explicit methods to perform a thorough investigation of patches and patterns within a body of data that can serve as evidence for an ongoing research study.

Here the task is to identify recurring themes or ideas within the data (Ritchie & Lewis, 2003) and I reviewed some selected samples of the data using colour highlighting or coding. The transcripts, field notes and documents are then examined carefully in relation to the research questions and objectives. In this way, the mass and mess of the data are filtered and reduced to useful components ready to devise a 'conceptual index' (Pierce, 2008, p.179; Ritchie & Lewis, 2003, p.221).

*Stage 1: Data management:*

*Table 3.13 Index for the Analysis of Democratic Quality of Election in Nigeria*

1. Setting the basic rules of democratic elections	a. Capacity/Institutional capacity/Conduct of EMB b. c. Others
2. Implementing the electoral process	a. Legitimacy of elections - integrity/honesty/and transparency of the process b. c. Others
3. Voter protection	a. Compilation of voter register b. c. Others
4. Electoral violence and political conflict	a. Competitive rigging/pre- & post-election rigging b. Others
5. Others	

*Source:* Author's compilation

Table 3.13 presents an outline of the index applied to the data. The index had 4 recurrent themes: setting the basic rule of democratic elections, implementing the electoral process, voter protection, electoral violence and political conflict. Each of the main themes has sub-indexes and in line with Spencer, Ritchie and O'Connor, a provision for emergent main theme and subthemes is made which appear in the 'others' category. However, as the work evolved the index kept changing until a saturated index was achieved. The saturated index is the final index upon which the analysis is based (Appendix A3).

This is the stage at which broader categories are formed which provides a descriptive account of the data. It requires that certain subthemes be regrouped into much broader concepts or collapsed into a single broad concept. Table 3.14 indicates that the setting of an autonomous electoral institution which had eight thematic codes (Appendix A2) is further reduced to three. This is done

by merging the codes and tags from the exercise in stage 1 (the 1<sup>st</sup> construct) to form the thematic chart (2<sup>nd</sup> construct).

*Table 3.14 Descriptive Analysis of the Autonomy of Electoral Institution*

Sources	1 <sup>st</sup> order construct	2 <sup>nd</sup> order construct	3 <sup>rd</sup> order construct
INT 3	The calibre of people appointed. President cannot remove an INEC Chair; he needs 2/3 of the Senate. He cannot fire an INEC REC like he fires a minister. The preparation was poor, the execution was poor and the logistics were poor.	Power of appointments, who to appoint and how to appoint an electoral commissioner.	Institutional autonomy.
INT 3	INEC and the President decided they are still going to have the elections.	Presidential intervention in electoral logistics.	Operational powers and the functions of the commission.
INT 7	National Assembly affects the conducting of elections in the country.	Intervention.	
	The conduct of the police too does.	Operational dependence.	
	Other agencies' actions actually affect the elections. The attitude of the politicians too. It is the responsibility of the INEC to protect the mandate.	Same as above. Outside intervention.	
INT 3	I scrutinised INEC budgets line by line. I know what it takes to organise decent elections.	Importance of budget in the conducting of elections	Financial independence.
INT 7	The National Assembly may vote money for INEC somebody refuse to release it.	Financial dependence.	
	INEC be given X billion. Suppose the person or agency refuses to release the funds.  Maybe they do not have the resources to do it.		

*Source:* Author's compilation.

This process involves the study of each of the columns, making a decision about its contents and questioning whether each piece is a component of an already existing category (Ritchie & Lewis, 2003, p.239).

This is to avoid having different categories that represent the same issue. In this manner, information such as ‘the calibre of people appointed’, the ‘president has no right to remove an appointed INEC chair, He cannot fire a REC’, ‘the preparation was poor, [the] execution poor, and [the] logistics poor’ are all merged together to form the broader category of institutional autonomy in the last column (3<sup>rd</sup> order construct). Similarly, data from respondents INT 7, INT 3 and INT formed the broad concept of operational powers and functions of INEC as appeared in column.

Even after merging the columns and their contents many issues remain unclear. However, some level of relationship can be visualised. For example, a respondent was reported to have said under financial autonomy that: ‘I scrutinise INEC budgets line by line. I know what it takes to organise a decent election.’ Another describes the election preparation as: ‘... poor, [the] execution poor, [and the] logistic was poor’. These two examples indicate a connection between the availability of funds and electoral logistics. Moreover, the same election was described as a ‘direct capture of peoples’ mandates and a subversion of popular sovereignty’. However, while this is an indication of linkage, it does not explain the associations.

To verify the associations and provide better explanations I use dispositional – explicit and recurrent - accounts provided by sources or patterns of the explanations among participants (Ritchie & Lewis, 2003, p.253). For instance, several sources and respondents recounted that political intimidation, harassment, attacks and counter attacks characterised the 2007 campaign trail (Chapter Five). Also, in a situation of the absence of explicit explanation, such as the connection between an election’s quality and the financial strength of the electoral commission, common sense and inferential arguments are employed to explain the situation. Here, several

sources acknowledged that poor funding conditioned INEC performance but there is no clear cut connection between that and election quality in terms of participation and competition. Therefore, to establish the linkage, I look at the explicit evidence provided such as ‘lack of funds constrained the commissions’ logistics and performance by not recruiting and training registration staff’ and establish how this translates into different forms of electoral irregularities which skewed electoral participation and competition (Chapter Four).

Other sources such as election results, effective participation and percentage averages are also used to establish valid connections. For instance, the 2007 elections were characterised by low effective participation and competition in comparison to 2011 as the electoral process was full of frauds. Lastly, much of the explanation offered in the discussion section of each of the empirical chapters is either based on some empirical studies or theoretical underpinnings. .

### *c) Validity and Reliability*

Validity and reliability questions in political science revolve around two major issues: (a) The extent to which assigned scores/classifications and indicators/components relate effectively to the systematised concepts; (b) and that the sources consulted adequately provide the required evidence to make valid inferences. Responding to the latter concern, political scientists adopt consistency as the best measure of reliability as efficient collaboration from at least three or more perspectives is reasonable to substantiate a claim (Pierce, 2008). On this basis, I feel it will be a duplication of effort to pay attention to reliability, as much of the data collection subsection is a systematic response to questions of reliability.

On the other hand, I use Robert Adcock and David Collier's content, criterion and construct techniques (Adcock & Collier, 2001) to respond to questions of validity. Therefore to capture all the necessary elements of the democratic quality of elections, I employed, first, the expanded procedural minimum definition of democracy. The definition not only focuses on electoral results but also on the context and processes that generate the result. This is an effort to ensure theoretical embedment as "we need a good theory to arrive at the proper concepts" (Kaplan, 1964, p.53 cited in Adcock & Collier, 2001). Therefore, a democratic election is participatory, not for the three indicators highlighted by Lindberg (2006) but for several other measures that could affect political participation (see Table 3.4). In this regard, an empirical attempt towards achieving quality elections in the Nigerian context requires the presence of an accurate national voter list, among other things. In short, the reworking of Lindberg's conception of democratic elections is necessary for it to fit the case under study. This is because content validation is situated within a broader conceptual agreement and adjusted to fit specific cases. Moreover, specific case concept formation can be a productive tool in content validation (Adcock & Collier, 2001).

Secondly, because case-oriented conception raises more questions of validity, I approach this concern using criterion validation. This refers to the extent to which the remodelled indicators of the dependent variable (the democratic quality of election) empirically relate to the indicators of other variables under consideration (electoral governance). If the classification fits, then it provides a basis for 'interpreting indicators as measuring the same systematised concept – thus providing convergent validation'. Also, where the relationship is weaker it is an indication that the dimensions measure different issues and therefore provide discriminant validation (Adcock & Collier, 2001, p. 540). In this regard, the empirical analysis in Chapters Four, Five and Six

indicates that the quality of the elections requires that the citizen's right of participation is guaranteed and a level playing field is necessary for effective political competition among electoral rivals. Equally, evidence shows that democratic elections require the functional and successful management of electoral cycles. For example, there is a clear connection between the maladministration of the electoral logistics and the violation of the freeness and fairness of elections. This provides a convergent validation as the use of voter turnout, for instance, left much to be desired. It further justifies the need for more robust and specific measures that are theoretically linked to an explanatory variable.

Lastly, the argument about validity relates to how interpretations generated from a specific context could be generalised. Notwithstanding, its contextual limitations, the applicability of this framework and its possible explanations are promising as the conceptual framework and methodological design are not carved in stone, and other research studies can add further information. Moreover, explanations in political science as in other social sciences are 'based on a particular set of cases, and a validity claim should be made, at least initially, with reference to this specific set' (Adcock & Collier, 2001, p. 535). Indeed, a valid case study has to be sensitive to the domain of the application of the operationalised concept as equivalent observation may require some repositioning. For instance, while scholarship has highlighted the relevance of policy voting in judging the quality of elections, such analysis will be difficult in a country like Nigeria where political parties and candidates rarely promote policy voting. Also, the context specificity of the study on Nigeria is what actually enhanced its relevance, as differences in the empirical domain of the application actually enhance equivalence among diverse settings and thereby promote theory building (Adcock & Collier, 2001).

### 3.6 *Ethics and Limitations*

Each political research study has its own limitations. While quantitative research suffers from technical rigidity and absolute detachment from the research context, qualitative research is subjective, individualistic, expensive, and lacks the power of generalisation. This is in addition to our personal advocacy. This is not an exception as “[a]ll researchers have biases, all people have biases, [and] all reports have biases’ (Stake, 2010, p. 164). Therefore, as a qualitative study of the integrity of democratic elections in Nigeria and as it was carried out by a Nigerian, this study has numerous limitations.

First, there are self-induced biases which can be manifested in the selection of respondents and interpretations. However, good research purifies the findings by setting up traps and audit trails that will convince clients those findings are accurate (Bryman, 2008; Lillis, 1999; Ritchie, Lewis, & Elam, 2012). In this manner, I try to be as explicit as possible. Accordingly, errors in my data, in the sample selection and the achieved sample, observational reports and analytical techniques are made transparent. Sources are triangulated so that evidence strengthens arguments and conclusions carry validity which is the foundation of acceptable results. For example, before reporting that there were allegations of connivance between the Presidency and INEC in the conducting of the 2007 election, I made sure that multiple sources reported similar allegations. TMG and LDC both reported such feelings and mentioned the effort of the presidency and INEC to stop the Vice President from contesting the elections, two respondents – one of whom was a former Minister with the ruling PDP – and two civil society activists all aired similar discontent. In short, I allow subjectivity and objectivity to compete so that evidence drives confidence (Stake, 2010, p. 29). In addition to personal predispositions, there are external infiltrations. Particularly,



the trust put in electoral observer reports will surely transmit some biases. However, evidence is just evidence and only functions to establish a claim (Stake, 2010, p.118). Therefore, I try to make sure only verifiable information is used in building arguments.

Second is the problem of the research contribution being beyond its local setting. Qualitative studies, it is argued, have sloppy and subjective tendencies which often limit their objective applications (Blaike, 2011, p. 191). Sceptics have always stated that such studies only provide new questions but not answers (Stake, 2010, p. 26). However, new questions equally mean new lines of inquiry as they point to new ways of doing things, new interpretations and perhaps valid answers. However, contributions towards scientific application requires ‘... a detailed examination of an event which [perhaps] exhibits the operation of some identified general theoretical principles’ (Blaike, 2011; cf. Mitchell, 1983, p.192). Therefore, while my primary concern here is about the conducting of the 2007 and 2011 elections in Nigeria, its comparative design reinforces its theoretical contributions. This conceptual framework and methodological design provides a more straightforward idea of democratic elections and can be seen as laying of the first block in a building project.

Three, the study suffers from the problem of having ‘many variables and a small number of cases.’ However, following Lijphart (1971) and Hopkin (2002 & 2010) I focus on the key variables and just two cases so as to have better control. This I did using the selective and subjective approaches (Mozaffar & Schedler, 2002). The selective approach provides that attention must be paid to the identified issues for better focus. It also makes it easy to pay attention to critical aspects of electoral governance that may influence the quality of the electoral contest. The subjective, on the other

hand, provides a double-check mechanism for data sources. Thus, it enriches the reliability and validity of information as it balances actors' subjectivity. This is visible in the way I selected my variable key respondents.

Four is that the achieved sample appears biased as the ruling party is not adequately represented. This was not deliberate as efforts to get the incumbent ruling PDP officials at the Party's Secretariat prove abortive. In fact, on my first visit, security personnel at the gate refused to let me enter. After answering several questions that were more personal and had less connection to security, 'the right person' to use the security guard's words informed me that all principal officers of the party had gone on leave. However, they collected my introductory letter and promised to get back to me. I requested acknowledgement of the receipt of the letter and was told that I could have the original back, if that is what I wanted. I waited for a call but throughout my field period I did not hear anything from the PDP. I decided to go down the party ladder, and therefore checked at the party's North-western Zonal office in Kaduna. The Administrative Officer who was busy distributing some food stuffs – Ramadan gifts - (*kayan azumi*) to party members and officials collected my letter and promised to get back to me. I requested his number so I could follow-up but later tried several times and the number never went through.

Lastly, the use of statistical data, election observer reports and other secondary sources has its own transferable biases. The statistical data, for example, might be flawed in itself as election results are subject to numerous circumstantial factors. Therefore, using raw elections results to predict the effectiveness of electoral participation and competition to a degree limit the validity of the findings.

On anonymity and respondents' informed consent in particular, the majority of the people interviewed were very familiar with the subject matter and the possible implications attached. Yet to motivate respondents and ensure active participation, I wrote emails, personally delivered introductory letters, employed personal connections, and explained to participants what the research is all about. For example, in one instance, I held three meetings with the respondent in Sokoto, Kaduna and Abuja, and in each I discussed the issues before we were able to agree on a date to have the interview. With this kind of follow up, to me it appeared that I had my respondents' consent and therefore could not be seen as an intruder to their privacy. However, at the time of writing I felt obliged to anonymity even in situations when respondent says: 'you can quote me on this' or 'I have the figures; I can give them to you'. Also, I have several of such instances, but looking at the current security situation in Nigeria, anonymous reportage is imperative.

Another ethical consideration dealt with is the political and spiritual inclination of the researcher. The decision to study the 2007 and 2011 elections and no other elections in Nigeria by a Muslim Northerner surely poses a test to political and spiritual emotions. Of course, as expected, I am sympathetic to one political party or candidate over another. However, no political parties in Nigeria symbolises a religion. Besides, the constitutional requirement that each party and candidate must have a national outlook makes contestants accept balanced tickets often along religious/regional divides. For example, in 2007 while the PDP had Umar/Goodluck, the ANPP had Buhari/Ume Ezioke and the ACN had Atiku/Obi as one single presidential ticket. Similar practice is what is obtained in 2011. Therefore, nobody can claim to have voted for a 100% Muslim or Christian presidency. In this regard, it adds nothing to my Islamic faith if the evidence available points to the betterment of 2007 over 2011 or vice versa. This does not mean I cannot be emotional

as I ‘choose the facts, quotations and mood to report’ (Stake, 2010, p. 203). Nonetheless, I do not present any single but rather multiple perspectives in all the chapters, in addition to a balanced discussion at the end. In fact, efforts to minimise, while writing, comments such as ‘inflammatory language’ balanced my self-induced biases.

### *3.7 Conclusion*

This chapter provides a simple and more enhanced conceptual model for the study of democratic elections in Nigeria. The chapter indicates that while good multiparty elections are very significant to democratisation, the literature is yet to come up with concise and rigorous indicators of what constitutes a good election. The most common efforts concentrate on democracy measures not elections. It was not until 1999 when Robert A. Pastor examined the role of electoral administration in democratic transition that interest in election quality began to crystallise. The first systematic method of analysis was put forward by Jorgen Elklit and Andrew Reynolds (Elklit & Reynolds, 2005; Elklit & Reynolds, 2002 ). A closer look at this and others that followed (Mozaffar & Schedler, 2002; Norris, 2013; Norris, Frank, & Coma, 2013) reveals over concentration on electoral administrative performance. These efforts provide a robust foundation for this study, but their failure to operationalise what constitutes a quality election leaves them underspecified. Also, while interest in electoral authoritarianism has brought about numerous insights in understanding hybrid regimes, there does not appear to be a concise conceptual basis for the study of democratic elections.

Consequently, this chapter bridges this gap and operationalises what constitutes democratic elections and what matters in studies on this area. Drawing from existing literature on democracy

and elections, the chapter puts forward 11 indicators through which we can examine and assess the democratic quality of elections. In addition, I propose a three-way hypothesis - of an autonomous electoral commission, a well organised electoral cycle, and a better mechanism of electoral dispute resolution – which are independent of democratic elections. With this framework, I suggest that a comparative research strategy would enhance our capacity to understand how electoral governance works in relation to democratic elections in Nigeria. The subsequent three chapters apply this conceptual model to the conducting of the 2007 and 2011 elections in Nigeria. Each chapter takes on one hypothesis and I examined this in detail. Chapter four takes on the relationship between the autonomy of INEC and the democratic quality of elections.

## *Chapter 4 Election Integrity: Does the Autonomy of Electoral Commissions Matter?*

This chapter examines how the autonomy of the Independent National Electoral Commission (INEC) in Nigeria influences the democratic quality of elections. Scholars of comparative politics differ as to the basic fundamentals of an independent and impartial electoral management body (EMB) and how should an independent EMB be constituted in order to ensure credible elections.<sup>1</sup> Thus, to understand the democratic quality of elections, we need to follow the power politics that preceded the conduct of elections including the operational powers and functions, legal institutional jurisdictions, and the *de facto* financial strength of the electoral commission that presided over the conduct of elections. This chapter pays attention to these concerns in the conduct of the 2007 and 2011 general elections in Nigeria as concrete experience from the country<sup>2</sup> and across Africa<sup>3</sup> highlights the significance of these factors. The purpose is to examine how the autonomy of the electoral commission (INEC) in Nigeria impacts on the democratic quality of elections.

The chapter establishes that there is a significant connection between the autonomy of the electoral commission and the quality of the elections in Nigeria. It indicates that the autonomy and impartiality of INEC has enhanced citizens' right to participate by substantially validating the

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<sup>1</sup> Three models – the model of ombudsman, checks-and-balances, and a third which is in between these two spectrums (Birch, 2011). The ombudsman is an institutional design of EMBs based on professional, permanent, and autonomous body made up of individuals chosen for their professional and expert credentials e.g. the judges (Hartlyn, McCoy, & Mustillo, 2008; Birch, 2011). The checks-and-balance model is a design that placed emphasis on a balance partisan representation of existing political interests (Pastor, 1999; Schedler 2000, Hartlyn, McCoy, & Mustillo, 2008; IDEA, 2006).

<sup>2</sup> (Kew, 2004; ERC, 2008).

<sup>3</sup> (Gazibo, 2006; Makulilo, 2011; Kambale, 2011).

national voter list in the 2011 elections compared to the 2007 elections. Also, it shows that The Commission has, to a degree, levelled the playing field for effective political participation, enhancing electoral competition among contestants in the 2011 elections rather than the 2007 elections. The change in the composition of the two legislative houses<sup>4</sup> and the number of states controlled by the ruling party justifies this assertion. Equally, the improvement in the perceived legitimacy of the process by the majority of Nigerians is not unconnected to the changes in the autonomy of the electoral commission. The remainder of the chapter analyses the perspective of election observers and interview respondents on the relative effect of the autonomy of INEC in the conducting of the 2007 and 2011 elections.

#### *4.1 Autonomy of the Electoral Commission: The 2007 Elections*

##### *a) Institutional Autonomy*

By political heritage and nomenclature, INEC is designed to be an autonomous organisation.<sup>5</sup> Analysing its activities in the conduct of the 2007 elections, however, reveals this independence to be controversial. The commission's autonomy and impartiality is questioned both legally and empirically. On the legal side, the argument revolves around the mode of appointment of the commission's governing body at national and state level,<sup>6</sup> qualification for appointment as

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<sup>4</sup> The Senate of the Federal Republic of Nigeria is the Upper House of the bicameral legislature and operates similarly to the House of Lords in the UK parliament. The House of Representatives is the Lower House or like the House of Commons.

<sup>5</sup> The former Nigerian President was reported to have said INEC shall conduct its activities without the: "... direction or control from any other person or authority, federal government or its agencies" at the inauguration INEC in August 1998 (The Guardian, Thursday March 11<sup>th</sup>, 1999).

<sup>6</sup> See the 1999 Constitution, section 154 (1).

electoral commissioner<sup>7</sup> and the reference to The Commission as a federal executive body.<sup>8</sup> In practice, concerns highlight INEC's actions and inactions which portray The Commission as biased.

Firstly, the constitution empowers the president to appoint INEC's electoral commissioners including the National Chair in consultation with the Council of State<sup>9</sup> subject to Senate confirmation. The understanding is that members of these bodies will checkmate any presidential excesses. However, some people question this arrangement, arguing that if the ruling party has the majority of the Senate or the house is full of the President's anointed candidates this check is nullified.<sup>10</sup> For others, the concern relates to the loyalty of those appointed by the President, as they might dance to his own tunes especially when he is a contestant or his party has a candidate in the elections.<sup>11</sup> Moreover, the President alone appoints all the 37 strategic field officers of The Commission (RECs). The Transition Monitoring Group (TMG), for instance, maintained that those appointed could '... pander to the wishes and do the bidding of the government in power' (TMG, 2007, p.54). Perhaps this explains the narrative that this is the most significant institutional problem INEC faced in the build up to the 2007 elections which the amendments to the electoral legal regime that preceded the elections failed to rectify (EU EOM, 2007, p.9).

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<sup>7</sup> The 1999 Constitution, Section 156.

<sup>8</sup> See section 153(1) of the 1999 Constitution.

<sup>9</sup> The Council of State comprises the President, the Vice President, all former Presidents and Heads of the Governments, all former Chief Justices of Nigeria (who are citizens of Nigeria), the President of the Senate, the Speaker of the House of Representatives, all the Governors of the States of the Federation, the Attorney-General of the Federation, and one person from each state appointed by the Council of Chiefs from among themselves.

<sup>10</sup> Interview with the officials of CDD, 13<sup>th</sup> of November 2012.

<sup>11</sup> Interview with the officials of TMG, 23<sup>rd</sup> August 2012.



Secondly, the constitution makes it possible for party loyalists to serve as critical field electoral officials. Constitutionally, a person is only qualified to be appointed as an INEC official if they are eligible to stand for election as a member of parliament. This, it is argued, makes it possible for the President to appoint party loyalists as candidates for a legislative position have to be sponsored by a political party.<sup>12</sup> Therefore, during nomination, you could expect the president to give priority to his party over others. While there does not seem to be any record of party-card-carrying members being appointed as INEC officials in 2007, there were allegations of the possibility of this. For example, it is alleged that INEC had people in 2007 who were government loyalists. The leadership, according to a civil rights activist, ‘... is more or less a government person, to a very large extent, I want to believe INEC is an extension of the presidency.’<sup>13</sup>

For many therefore, the commission’s leadership is full of people installed to protect the interests of the government. There is, for example, the fear that those appointed by the President would be at his beck and call and could pander to the wishes of the ruling party.<sup>14</sup> This is probably because they are members of the party who ‘... lacked independence of mind [and] who can kneel down before anybody to get the job.’<sup>15</sup> These are, according to a renowned civil activist, ‘... people who do not believe in democratic institutions, they do not believe in the rule of law, they just believe in doing things their own way. They put personal interests above public good.’<sup>16</sup> This appears to be the explanation of the directives given to the then INEC-chair to proceed on immediate

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<sup>12</sup> Section 156 (1 a, b), 66 (1 a, b, c and 2 a-d) of the 1999 Constitution.

<sup>13</sup> Interview with officials of TMG, 23<sup>rd</sup> August 2012.

<sup>14</sup> This view is expressed in a document co-authored by one of my respondents who referred to the same publication on several occasions.

<sup>15</sup> Interview with a former federal civil servant, 31st August 2012.

<sup>16</sup> Interview with civil activist, 23<sup>rd</sup> August 2012.

‘disengagement leave’ (Vanguard, 2010) even though there was no record of such a term or provision in Nigeria’s public service rules.

Lastly, the reference to INEC as a federal executive body weakens its substantive autonomy. It makes The Commission somewhat accountable to the presidency as the majority of agencies under this section take directives from the executive.<sup>17</sup> Thus, some believed that this arrangement gave the incumbent some latitude of control. For example, it is alleged that INEC’s activities in the 2007 election reflect it as an extension of Obasanjo’s overbearing influence. The two (INEC and the President) united in making sure that many candidates who are not friends of the government were eliminated from the contest.<sup>18</sup> Governorship, parliamentary and presidential candidates were denied their right to contest the elections (I shall return to this shortly), explaining Berrett’s conclusion that the then President was busy using the existing political setting to build his political fortunes.<sup>19</sup> It also explains why during the days of the Electoral Reforms people campaigned strongly for the independence of the commission.<sup>20</sup>

In practice, The Commission seems biased to oppositions and favours the incumbent and his party. For example, it is alleged that INEC and the president decided to go ahead with the 2007 elections despite apparent logistic challenges. The commission, after the Supreme Court ruled in favour of the then Vice President, was faced with the challenge of printing over 60 million ballot papers five days<sup>21</sup> before the elections. Abubakar was originally removed from the ballot in what appears to

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<sup>17</sup> Section 153(1) of the 1999 Constitution.

<sup>18</sup> Interview with an official of TMG, 23<sup>rd</sup> August 2012.

<sup>19</sup> See Chapter 2 for a discussion on political settings.

<sup>20</sup> ERC, 2008.

<sup>21</sup> The judgement was passed on the 16<sup>th</sup> of April and the elections were scheduled to be held on the 21<sup>st</sup> of April 2007.

be a conspiracy between the INEC and the presidency to stop him from contesting the elections (TMG, 2007; LDC, 2009; EU EOM, 2007; NDI, 2008). Some oppositions such as the National Democratic Party (NDP) and other people within the government thought that the judgement would make the adjustment of the electoral timetable inevitable such as suspending the elections by a week or two. NDP sought an order to stop the elections on the grounds that 'INEC has failed to comply with the legal provisions for the registration of voters' (EU EOM, 2007, p.10). A respondent said '... the easiest option would have been to extend the elections for a week or two, but ... I think INEC and the president decided they are still going to have the elections anyway'.<sup>22</sup> Thus, the elections were conducted without delivering essential electoral materials, including ballot papers and result sheets to numerous places across the country (EU EOM, 2007; NDI, 2008; TMG, 2007). Many people including those within the government did not believe that electoral materials were delivered across the country (ERC, 2008). For instance, a former minister of the federation explained that:

Many of us in the government believed that a large percentage of the ballot papers were never even delivered. And, those that were delivered could not be distributed to every part of the country. Abuja got its ballot papers because [it is] Abuja, everything lands here first.<sup>23</sup>

This indicates that there are several places where elections were delayed beyond a reasonable period of time or not held at all, perhaps explaining the claim that INEC reported election results in places where election materials were never delivered and elections never held.<sup>24</sup> In certain instances, the results were declared even when the elections were ongoing.<sup>25</sup> For instance, it is said

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<sup>22</sup> Interview with a former federal civil servant, 31<sup>st</sup> August 2012.

<sup>23</sup> Interview with a former federal civil servant, 31<sup>st</sup> August 2012.

<sup>24</sup> Interview with a CDD official, 13<sup>th</sup> November 2012.

<sup>25</sup> Interview with a CEDDERT official, 16<sup>th</sup> November 2012.

‘... by the time the results [presidential election results] were announced, results were coming in from different parts of the states, when the chairman excused went down, came and announced the final result’.<sup>26</sup>

In such a manner, the elections appear uncompetitive and participation becomes ineffective. For example, during candidate nominations INEC was accused of getting involved with the selection and substitution of candidates. Domestic observers reported that The Commission and the incumbent party substituted candidates who were the actual winners of their party primaries (TMG, 2007; LDC, 2009). Rotimi Amaechi is said to have won the People’s Democratic Party’s (PDP) governorship primaries in Rivers state but was replaced by Celestine Omehia on the day he was waiting to be handed the party’s flag. Amaechi sought for redress at the court and the party expelled him. While the matter was pending, INEC organised the elections and returned Omehia as governor elect. In an appeal judgement, the Supreme Court returned Amaechi as the governor. The court described INEC’s and PDP’s act as unconstitutional, null and void (Rt. Hon. Rotimi Amaechi vs. INEC & Others, 2008).

With such prejudice, according to foreign observers, INEC seems internally polarised with some insisting that The Commission asserts its independence and others opposed to this move (NDI, 2008, p.25). The pro-independence group were allegedly arrested by the Economic and Financial Crime Commission (EFCC), among which were three INEC Commissioners and two senior administrative staff (NDI, 2008, p.25). The civil society organisations and other opposition parties questioned this move and interpreted it as disrespect towards INEC and a plan to disrupt the

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<sup>26</sup> Ibid.

elections. The Publicity Secretary of Action Congress (AC), for instance, issued a press statement, questioning the act of the EFCC. He argued that: ‘The truth is that the commissioners being targeted by the government's attack dog are the same ones who have consistently opposed Iwu's decision to dance to the tune of the PDP-led government by banning our presidential candidate and other opposition politicians’ (Abonyi & Okocha, 15<sup>th</sup> February 2007).<sup>27</sup> Confirming this, an INEC official who spoke to the Human Rights Watch on condition of anonymity, explained that an INEC commissioner who rejected the idea of disqualifying ‘any of the “indicted” candidates unless ordered to do so by a court of law [was] shortly after arrested by the EFCC on charges of corruption’.<sup>28</sup> This could be part of the reason why there were several logistical failures such as the serious shortage of sensitive election materials including ballot papers and boxes and EC8 and EC8A forms<sup>29</sup> across the country (EU EOM, 2007; TMG, 2007; NDI, 2008). In short, the late president Yar’adua, the beneficiary of the election acknowledges these irregularities in several places. For instance, in a consultative meeting on the electoral process held on the 16<sup>th</sup> of January 2008, he indicated that the major problem with democratic elections in Nigeria is the way and manner politicians handle the elections (Adeniyi, 2011). This clearly indicates that the institutional power of INEC is limited both in legal and empirical terms. However, this does not provide enough evidence to tell a story about the autonomy of EMB as other factors are at play.

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<sup>27</sup> Other media sources that reported this incidence include Sahara reporters: [Three INEC Commissioners Arrested by EFCC](#) and the Daily Trust: [EFCC Arrests Two INEC Commissioners, Others](#).

<sup>28</sup> HRW (2007, p.33), Interview with an INEC official, Abuja February 19<sup>th</sup> 2007 available at [“Election or “Selection?” Human Rights Abuse and Threats to Free and Fair Elections in Nigeria](#).

<sup>29</sup> Forms EC8 and EC8 series are forms provided for the collation and compilation of election results depending on each election: presidential, gubernatorial and all legislative elections.

*b) Operational Powers and Functions*

The legal powers and functions given to an electoral commission can condition its autonomy and influence the conduct of credible elections. INEC is empowered to i) organise, undertake and supervise all elections of the offices of the President and Vice President, the Governor and Deputy Governor of a State, and the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation; ii) register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly; iii) monitor the organisation and operation of political parties, including their finances; iv) arrange for the annual examination and auditing of the same and publish a report for public information; v) arrange, conduct, maintain and revise the registration of persons qualified to vote for the purpose of any election; vi) monitor political campaigns and regulate the conducting of political parties during electioneering; vii) ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe to the Oath of Office prescribed by law; viii) delegate any of its powers to any REC; and ix) carry out such other functions as may be conferred upon it by an Act of the National Assembly (Part I, third schedule (f) section 15). The Commission is mandated to ‘... conduct voter and civic education, promote knowledge of sound democratic election processes and conduct any referendum.’<sup>30</sup>

Though the constitution provided for these activities to be carried out by INEC, it fails to give The Commission the necessary powers to discharge these functions. For example, The Commission is

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<sup>30</sup> The 1999 Constitution both before and after amendments and the Electoral Acts 2006 (as amended) and 2010 (as amended).

to have absolute control over staff matters<sup>31</sup> but has to seek presidential approval for all its administrative activities.<sup>32</sup> According to a former national chairperson of The Commission this arrangement contradicts the notion of autonomy required for a commission to discharge the above functions.<sup>33</sup> This provision makes The Commission answerable to other ministries who have to scrutinise its activities including budgets,<sup>34</sup> procurements and expenditures that are salient to electoral preparations. For example, The Commission blamed the Due Process office, the Ministry of Finance and the Central Bank for its 2007 electoral failures. These institutions, INEC argues acted as if The Commission is an extra ministerial agency of the executive. It contented that:

... the bureaucratic [delay] for [the] release of funds appropriated for the preparation of the elections adversely impacted the pre-election activities to the point of being a drawback to the plans for the polls (INEC, 2007, p.50).

Indeed, such bureaucratic bottlenecks negatively influence the commission's neutrality and by extension the legitimacy of the elections. For some, the elections reveal '...the near-total dominance of the PDP, which itself is derived from the pervasive influence of the outgoing President Obasanjo... and INEC is not immune to [his] influences.'<sup>35</sup> This lack of substantive powers has three implications for the elections.

Firstly, the commission's apparent technical and administrative weaknesses deprive the elections of any symbol of fairness. For example, TMG alleged that the electoral body is programmed to fail during the 2007 elections and it expended a large amount of time arguing that it has the power

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<sup>31</sup> See section 158 (1) of the 1999 Constitution.

<sup>32</sup> Section 160 (1) of the 1999 Constitution.

<sup>33</sup> Guobadia (2009).

<sup>34</sup> Interview with former National Secretary, 1<sup>st</sup> November 2012.

<sup>35</sup> Ibid.

to disqualify candidates (TMG, 2007, p.7). By law a candidate for a presidential or gubernatorial position is required to: i) be a citizen by birth; ii) attain a minimum age criterion; iii) be educated to at least school certificate level or the equivalent; iv) be sponsored by a political party; and v) not be indicted for embezzlement or fraud by any Judicial Commission, Administrative Panel, or Tribunal of Inquiry set up by either the federal or state government.<sup>36</sup> On these grounds and the outcome of a panel of inquiry,<sup>37</sup> INEC requested political parties on the 13<sup>th</sup> of February 2007 to substitute their candidates. Further, it disqualified candidates, the majority of whom were either formidable opponents to the ruling party or the party's candidates who have political scores with the incumbent. For example, the Action Congress (AC) presidential candidate was disqualified from standing in the elections. The candidate and his party challenged the commission's act in the court of law. All of the three courts<sup>38</sup> that heard the case upheld that 'INEC has no power whatsoever to disqualify any candidate from the general elections' (*AC vs. INEC (2006)*, 6.n.w.l.r, (part 1029) 142 at 162).

The commission's one-sidedness is also apparent at state level. For instance, in Adamawa State, the governorship candidate for AC was crossed out with a red marker a day before the election (LDC, 2009, p.34). In fact, election observers witnessed the defacing of the picture (NDI, 2008, p.28). Similarly, in Kogi state, the All Nigeria People's Party (ANPP) governorship candidate was

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<sup>36</sup> Sections 137(1) and 182 (1) of the 1999 Constitution.

<sup>37</sup> The then federal government acting in concert with the anti-graft agency (EFCC) and INEC set out to disqualify politicians that the government claimed to be corrupt. The government set up an administrative panel of inquiry headed by Prof. Ayua who was the Solicitor General of the Federation which sat for a few days and indicted some of the candidates nominated by political parties (TMG, 2007, p.65).

<sup>38</sup> Federal High Court, Court of Appeal and the Supreme Court.



barred from contesting the elections and his name and picture were removed from the ballot paper before the elections (TMG, 2007, p.171).

Secondly, The Commission refused to comply with several court injunctions which aim to create a fair or level playing field for contestants. For example, The Commission refused to comply with the court order that the names and pictures of candidates of AC and ANPP for the governorship elections in Anambra state should be included in the ballot paper. This act is interpreted by domestic observers as an attempt by The Commission to pave the way for the victory of the PDP in the state (TMG, 2007, pp.170-171). It is described as an apparent partiality and disregard of honest counsels<sup>39</sup> aimed at replacing unwanted candidates.<sup>40</sup> Also, The Commission together with the ruling party substituted candidates at will without following the due process. For example, Senator Ifeanyi Ararume who won PDP's primary in Imo State was substituted, following a letter from the party claiming an error, with an aspirant who became the 12<sup>th</sup> in the primaries (TMG, 2007; LDC, 2009). Ararume petitioned against the commission's act and the court ruled that '... the PDP did not offer convincing reasons for the substitution and therefore voided it [and] Ararume [is] the validly nominated the candidate of the PDP for the Imo State governorship election' (*Charles Ugwu & ANOR. vs. Ifeanyi Ararume, 2007*).

Lastly, the performance of The Commission during the elections cannot be seen as transparent. It is reported that the electoral logistics 'contains huge potential to go badly off-track [and] to become

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<sup>39</sup> It was reported that the British High Commissioner, before the elections, urged the government to let courts decide the fate of the indicted politicians (Democracy Watch, 2007).

<sup>40</sup> The due process for candidate substitution is as stipulated in Section 34(2) of the Electoral Act 2006 (as amended). It requires that for a party to replace a candidate that has already been submitted, it has to provide cogent and verifiable reasons.

not a milestone in democratic consolidation.’<sup>41</sup> For example, many strategic partners including political parties were left in the dark not knowing what the next activity is or when it will take place as the electoral timetable was in bits (EU EOM, 2007). Non-partisan observers were either not allowed to attend meetings between The Commission and other electoral stakeholders or not given complete accreditation. Many election observers were denied access to necessary information and materials, including the voter register (EU EOM, 2007). Instead, INEC incited a debate over what election monitoring and observation is, claiming that the prerogative of monitoring belongs to it alone and that observers only observed (NDI, 2008). The Commission accused observers of been biased in their operations.<sup>42</sup> While the literature indicates that observers do have their own biases (Kelly, 2010), this does not mean that election monitors shall be mishandled by the electoral commission on the pretence of biasness. In short, many observers and respondents believed that the powers and functions of INEC during the 2007 elections were undermined and thus described the election as a ‘fail’,<sup>43</sup> ‘charade’,<sup>44</sup> short of international standards<sup>45</sup> that has failed Nigerians.<sup>46</sup>

### *c) Financial Autonomy*

Closely related to the issue of institutional and operational autonomy is the thorny issue of the independence of The Commission in terms of funds. In Nigeria, the constitution provides the legal

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<sup>41</sup> From a document compiled by the CDD and to which I was referred by the CDD respondent during the interview.

<sup>42</sup> See Prof. Maurice Iwu’s lecture during the Enugu Civil Society Conference in May 2006.

<sup>43</sup> TMG, 2007.

<sup>44</sup> LDC, 2007.

<sup>45</sup> EU EOM, 2007.

<sup>46</sup> NDI, 2008.

framework for funding INEC.<sup>47</sup> It provided for the establishment of an INEC fund into which sums and payments accruable to The Commission for carrying out its functions are to be deposited.<sup>48</sup> The Commission is to use the monies to: defray all administrative expenses; reimburse members' and/or the committee's expenditure; pay salaries, fees, pensions, remunerations, gratuities and all forms of expenses incurred. By this regulation, funds for INEC are provided under six budgetary heads: consolidated revenue funds charges; recurrent expenditure; overheads cost; special electoral material procurement capitals; special electoral capital which includes expenses such as honorarium for ad hoc staff, training and the purchase of vehicles (INEC, 2007). However, the problem is all administrative, electoral – recurrent and capital expenditures have to pass through existing financial protocols for the government to release the funds which means they have to be approved by the executive or other relevant institutions.<sup>49</sup>

Under this arrangement, The Commission is poorly funded and dependent on the executive. Sources point out that The Commission has had a history of financial dependence on the executive, even when funds are appropriated (ERC, 2008). For example, in the build up to the 2007 election a total of 54.5 billion was appropriated to INEC and this is far more than any amount budgeted for any electoral commission before (EU EOM, 2007). However, while money was allocated to The Commission by the National Assembly '... somebody refused to release it. [The house gave] X billion [to INEC but] a person or agency refused to release the funds.'<sup>50</sup> Consequently, in 2006 INEC's cheques issued to contractors for the supply of critical electoral materials bounced as the

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<sup>47</sup> See sections 81 and 84 of the 1999 Constitution.

<sup>48</sup> Electoral Act 2006 (as amended), section 3(1).

<sup>49</sup> Establishment of INEC Fund under the disbursement of the executive (sections 81 and 84).

<sup>50</sup> Interview with staff of CEDDERT, 16<sup>th</sup> November 2012.

Due Process office within the presidency failed to clear the commission's payments (NDI, 2008). Explaining its concern about this delay, INEC indicated that the increase in budget did more harm than good and the anticipated benefits of the increase were counterbalanced by the late release of funds (INEC 2007, p.51). For instance, because INEC's cheque bounced, contractors failed to supply the adequate electoral materials. As a result, The Commission began registration with only 1,000 machines (LDC, 2009) out of the 120,000 units required. Also, it had to rationalise the machines and voters, including vulnerable groups who were exposed to different forms of difficulty. For example, during the registration exercise people had to travel or wait for an unreasonably long time before they could be registered. A woman explained to TMG that:

Yesterday I waited with my four [year] old son for six hours in the sun and at the end of the day, I was still unable to register, with excuses that the machine had broken down due to power failure (TMG, 2007, p.111).

In addition, the poor management of the registration makes corruption easy. For example, the registration officers were reported to have demanded money from the electorate before they could be registered. People

... in the queue, [were asked to] contribute up to N10, 000 ([ten thousand naira]) to enable the presiding officer to hire another generator. At the end of the day I could not register and one of my sons caught a fever due to being exposed to the sun (TMG, 2007, pp.111-112).

Many did provide money, while others even provided food or bought a whole generating set (Akhaine, 2011, p.651) before they were registered. In the end, the final voter register contained names such as Bill Clinton and Nelson Mandela<sup>51</sup> and people asked suspiciously:

... How can we have a Bill Clinton, Bill only came to power in the '90s. Ok fine. Bill Clinton was President in the '90s in America. Do you want to tell me that somebody found the name so

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<sup>51</sup> Interview with the official of TMG, 23<sup>rd</sup> August 2012.

lovely and has just given birth to a child and gave that child this name? All of a sudden, the guy decided to be registered as a voter to take part in the election.<sup>52</sup>

As expected, during the elections, the register turned out to be another electoral deficit. People had to wander and struggle to locate their names from one polling unit to another to cast their vote (TMG, 2007, p.121). Others were referred to polling units where they never registered for accreditation and voting (LDC, 2009). Equally, instead of its ambitious plan to report election results from polling units to a national central collation centre, The Commission followed the old manual collation from polling units to ward collation centres, to local, state and national collation centres (INEC, 2007).

Also, the ill-timed release of funds forced The Commission to recruit and deploy ad hoc electoral officials without training. Observers indicated that the majority of ad hoc staff were trained without them ‘... seeing the machines they are to operate’ (TMG, 2007). For example, during the registration exercise, voters complained to election observers that registration officials did not know how to operate the Direct Data Capturing (DDC) machines.<sup>53</sup> This helps to explain why voters found incorrect data entered against either their names or pictures. In one instance, a male picture is assigned to a female registrant (NDI, 2008, p.15). This is perhaps not surprising given that the large part of the registration period was only covered with 1,000 machines instead of the required 120,000 units (that is one machine per registration centre). This is not a healthy development for democratic elections as if we assume that each polling unit has between 300 and 500 voters, it means that each machine is to cover 120 registration units. To be precise, each

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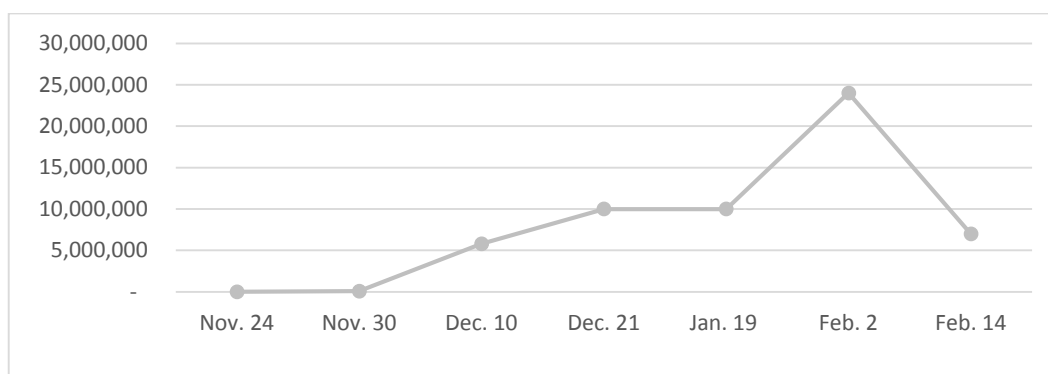
<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

machine had to register a total of 36,000 – 60,000 voters and this seems to be unrealistic considering the registration timeframe in addition to the progress of the exercise.

Lastly, the late release of funds frustrated the commission's effort and eligible voters including women. For instance, from the 7<sup>th</sup> of October 2006 when registration commenced up to the 14<sup>th</sup> of February 2007, INEC was only able to register 7,000,000 voters nationwide (NDI, 2008). Surprisingly, however, INEC declared a total of 61,567,036 registered voters at the end of the exercise. It is interesting that The Commission was able to achieve such a figure especially considering the challenges it faced as the registration progressed.

*Figure 4.1 Progression of Number of Registered Voters, 2007*



*Sources:* NDI Report (2007, p.16)

Figure 4.1 indicates that as at the 24<sup>th</sup> of November 2006 INEC had registered 3, 500,00 voters. Six days after the first announcement (i.e. between the 24<sup>th</sup> and 30<sup>th</sup> November) The Commission only achieved an increase of 70,000 registered voters. Ten days later, INEC could only register an additional 5.8 million voters. In other words, during the first two months, The Commission was registering an average of 500,252 voters per day. Suddenly, this trend changed and The Commission started to register about 2 million voters per day. This is despite the report that 'it

was only in mid-January that [contractors were able to deliver] the final batch of the 33,000 DDC machines' (EU EOM, 2007, p.14).<sup>54</sup> This sudden change seems a typical demonstration of Darren Kew's statement in respect to the 2003 voter registration exercise that '... somehow, the numbers of the registered voters were bursting at polling stations across the nation' (Kew, 2004, p. 149).

Perhaps this explains the existence of fake, ghost and phantom voters in the register. In fact, it is reported that among those

... whose photographs were scanned and assigned names are former boxing champions Mohammed Ali and Mike Tyson, the Chief Justice of Nigeria, Idris Kutigi, the Central Bank Governor Charles Soludo and the INEC Chairman Maurice Iwu. Interestingly, a photo of the founder of the Christ Apostolic Church, who died in 1949, found its way into the Ondo state voter register (LDC, 2007, p.39).

Thus, indicating the relevance of demographic factors in explaining how political actors use the voter list as a political weapon during elections. Besides, the total of registered voters announced lags behind its predecessors and successor. The 1983, 1987 and 2002 figures were 65,304,818, 72,000,000 and 60,823,022 registered voters respectively.<sup>55</sup> This is despite the fact that the country's population figure is growing at a 3% increase, and even if we imagine it to remain constant, any person who by October 2000 falls within the age bracket (13-17 years old), shall be qualified to register by October 2007. Yet, after 5 years INEC only identified 744,014 voters that had attained the official 18 years of voting age. In short, the above indicates that in 2007 INEC's financial handicap affected the electoral design, preparation and implementation to the extent that

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<sup>54</sup> Prof. Maurice Iwu reported by the EU observers.

<sup>55</sup> Bendal (1999) and field notes.

it compromised the quality of the elections. It further reveals that the entire expense of The Commission depends on and follows from the executive.

#### *4.2 Autonomy of the Electoral Commission: The 2011 Elections*

##### *a) Institutional autonomy*

In contrast to the 2007 elections, during the 2011 elections INEC appeared to enjoy some formal institutional independence. By formal, I refer to the constitutional independence offered to The Commission in terms of the appointment of its governing boards including RECs, the qualifications of those to be appointed as INEC principals, and the commission's bureaucratic relationship with other agencies of government. While the president retains his power to appoint all electoral commissioners, for the first time in Nigeria's electoral history the list of REC appointees is subjected to Senate confirmation (Appendix A1). As critical field agents, the loyalty of the RECs is highly significant. The commission's institutional balance requires the RECs who supervise the conduct of elections at state level to only be loyal to the commission. This is to avoid a situation where they might be used by the incumbent governor of their state of primary assignment. Also, because some of them are appointed on the advice of either party officials or the state governors,<sup>56</sup> there is a tendency for them to be partisan members of a given political party. Moreover, past experience shows that RECs do conspire with state governors to defraud elections. Confirming this is a former governor of Cross River state, who reported that RECs in a courtesy call to an incumbent governor do solicit for accommodation, vehicle and other assistance. The governor will provide and promise to be available for any further assistance. He said '... people

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<sup>56</sup> Interview with staff of CEDDERT, 16<sup>th</sup> November 2012.



think that at the end of [every] elections, the PDP just decide who wins and who doesn't and announce the results. I think the process is a bit more sophisticated than that' and he indicated that RECs are some of the mediums for establishing electoral windfalls for the party at state level (Duke, 2010). In this context, the change in the mode of appointment of the RECs cannot be belittled.

Secondly, the removal of the party membership as a requirement for appointment reinforces the autonomy of the commission.<sup>57</sup> For example, following this change, three members of the ruling PDP were found to have been included and submitted for Senate confirmation as RECs by the presidency. These were a former PDP governorship candidate in 1999, a member of the Board of Trustees of the PDP and a senatorial candidate in the 2003 and 2007 elections on the platform of the ruling party (National Tribune, June 18<sup>th</sup>, 2010).<sup>58</sup> On this ground, the Senate rejected their nomination and asked the presidency to submit a replacement. For its own part, the executive argued that the constitution did allow for the appointment of anybody including party officials. In fact, the presidency argued whether the law is to be followed to the letter:

We can decide to make the acting chairman (of PDP) the chairman of INEC, if we choose to do so, if we believe that he can conduct elections freely and fairly. In fact, the law emphasises that to be in INEC you must qualify to stand in elections in the House of Representatives. For you to stand in elections in the House of Representatives, you must be a member of political party. So ... you can appoint people in political parties to be in INEC (National Tribune, June 18<sup>th</sup>, 2010).

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<sup>57</sup> Section 156 (1) (a) was amended by inserting immediately after the word 'Representatives' the words 'provided that a member of any of these shall not be required to belong to a political party, and in the case of the Independent National Electoral Commission, he shall not be a member of a political party'.

<sup>58</sup> These people are Ambassador [M] Z. Anka, General (AB) Mamman [RTD], and Alhaji Yakubu Shehu who was also the chairman of PDP stakeholders in Giwa Local Government of Kaduna state.

However, this contention no longer holds as the relevant amended section has removed party membership as a requirement for appointment.<sup>59</sup> According to some respondents, this change has resulted in the improvement recorded in the 2011 elections. For example, the successful winning of the governorship of Nasarawa state by the newly registered Congress for Progressive Change (CPC) was ascribed to, among other things, the steadfastness of ‘... the National Electoral Commissioner [(REC)] from INEC who was sent there, a woman who [maintained that] whoever the people vote for must hold [and] refused to allow any change of result.’<sup>60</sup> It is believed to have expanded the space of democratic participation, improved the environment for political competition (EU EOM, 2011), elevated the standard for electoral fairness, and provided grounds for democratic engagement (NDI, 2012), making the elections conform to some of the democratic values expressed at regional level.<sup>61</sup>

Lastly, while the amended constitution maintains INEC is part of the executive bodies, it relieves The Commission from other bureaucratic intrusion. For example, INEC was given the power to ‘... make its own rules or otherwise regulate its own procedures [and] shall not be subject to the approval or control of the President.’<sup>62</sup> Thus, this explains why the current Commission Chair described INEC as more autonomous than previous commissions. He said:

... The Electoral Act has many provisions which make the operations of INEC independent of interference or control by any federal agency. So really, in the context of the Constitution of the

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<sup>59</sup> See Appendix A1.

<sup>60</sup> Interview with the former minister, 31<sup>st</sup> August 2012.

<sup>61</sup> The Project Swift Count press release of 18<sup>th</sup> April 2011 described the elections as meeting the ECOWAS’s protocols on Democracy and Good Governance and the AU Declaration on the Principles Governing Democratic Elections.

<sup>62</sup> Section 160(1), 1999 Constitution (as amended).

Federal Republic of Nigeria 1999 (as amended) and in the context of the Electoral Act 2010 (as amended), INEC definitely has greater administrative autonomy than it ever had before.<sup>63</sup>

Sharing a similar view, some respondents believed that the autonomy of The Commission has improved slightly which strengthens its capacity to foster effective participation and competition. One of them explained that contrary to the 2007 election when INEC started registration with 1,000 machines, during the 2011 election, The Commission procured 232,000 DDC machines and deployed the same number to the field.<sup>64</sup> This is believed to have contributed to the successes recorded in the 2011 registration exercise (EU EOM, 2011; NDI, 2012).

However, others argued that INEC was provided with all the prerequisites of an independent institution both in the 2007 and 2011 elections. For the opposition, The Commission only chose to throw these principles overboard. For example, the opposition presidential candidate alleged that there was nothing wrong with INEC's legal status in both 2007 and 2011. He said: '[w]ell, I'll say we are just lawless by nature either as people or as a nation. Otherwise, you cannot fail this country on paper; everything has been properly documented in the constitution.' This implied that what transpired in 2011 was not in any way different from the previous elections of 2003 and 2007 and that INEC under Jega which was thought to have a semblance of electoral propriety has proved incompetent.<sup>65</sup> Another respondent felt that on paper the electoral commission in Nigeria is more autonomous than many other commissions in Africa, including the electoral commission of Ghana, but the conducting of both elections does not appear complimentary.<sup>66</sup> These reservations are

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<sup>63</sup> Interview on 13<sup>th</sup> September 2012.

<sup>64</sup> Interview with a CDD official, 13<sup>th</sup> November 2012.

<sup>65</sup> Interview with an opposition candidate, 26<sup>th</sup> July 2012.

<sup>66</sup> Interview conducted on the 31<sup>st</sup> August 2012.

cogent to an extent, but do not seem to override the volume of evidence at hand, as we shall see soon.

*b) Operational Powers and Functions*

Unlike in 2007 when The Commission could only exercise control over staff matters, in 2011 INEC had the full authority and powers to make its own rules and regulate its activities. The Commission no longer needed the approval of the President.<sup>67</sup> Therefore, in addition to its powers to conduct elections, INEC was free from other pressures from the government.<sup>68</sup> However, it can be argued that these are *de jure* powers and the *de facto* authority can in its capacity to make and implement decisions without outside influence, remain open and transparent to all contestants and observers, and be effective in its operational performance.

In this manner, evidence indicates that INEC has demonstrated considerable effort towards making and implementing the necessary decisions to institute procedural certainty. For example, in preparation for the 2011 election, INEC realised that the challenge of conducting a democratic election in a complex society like Nigeria ‘... is associated with the quality of the voter’s register, and the voter register in place could not be said to be credible.’<sup>69</sup> Consequently, The Commission made 119,000 registration units operational, each with DDC machines so that all eligible voters could be captured within the shortest possible time (PSC, 2011; NDI, 2011; EU EOM, 2011; RERC, 2012). Also, after making sure that electoral materials are adequately provided (I shall expand on this in Chapter Five) on election day, ballot boxes were given unique identification

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<sup>67</sup> Section 160(1) of the 1999 Constitution (as amended).

<sup>68</sup> Section 156 (1) (a).

<sup>69</sup> Interview with INEC Chairperson, 13<sup>th</sup> September 2012.

numbers that corresponded to each polling unit, ballot papers were printed with security features including serial numbers and colour coding, and logistic arrangements were made in the distribution and retrieval of electoral materials. Also, The Commission consulted with all stakeholders including political parties, civil society groups and the security agencies and used Vice Chancellors and Professors in the collection and announcement of results. These, as the chairman argues, make the whole process transparent and accountable to the public.<sup>70</sup>

In addition, The Commission adopted the Re-modified Open Ballot System (REMOBS). REMOBS is a system of voting that involves a separate period and process of accreditation and polling. The accreditation starts between the hours of 8:00am when the polling station open and stops at 12.00 noon or when any prospective voter already in the queue to be accredited before 12.00 noon has been accredited. At the end of the count, the voters, still in the queue, are issued with a ballot paper that has been duly stamped and signed by the Presiding Officer to cast their vote (INEC, 2011). The system reduces the extent of major electoral malpractices including multiple, double and proxy voting (INEC, 2011; EU EOM, 2011, p.19; NDI, 2012, p.21). The PSC in particular recommended the exercise<sup>71</sup>, indicating its confidence in the results announced by INEC. The group described the result announced as a true reflection of the votes cast by Nigerians at polling units.<sup>72</sup> In addition, the elections are believed to be conducted in a peaceful atmosphere, with all polling units made operational, and accreditation and voting were conducted in a timely manner (EU EOM, 2011). It is indeed more transparent and credible than the three preceding polls

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<sup>70</sup> Ibid.

<sup>71</sup> Interim Statement on the Voter Registration Exercise, Tuesday February 1, 2011

<sup>72</sup> Statement on the Selected Gubernatorial Elections Results, Saturday, April 30 2011. The group covers four states - Plateau, Borno, Kano and Oyo.

of 1999, 2003 and 2007 and represents a milestone in the country's democratic development (NDI, 2012).

Also, in the 2011 elections INEC safeguarded the rights of Nigerians to vote. For instance, on several occasions The Commission made clear that anybody found guilty of misconduct would be prosecuted in accordance with the law (EU EOM, 2011, p.17). The Commission also recruited and trained members of National Youth Service Corps (NYSC) as presiding officers and students of tertiary institutions as assistant presiding officers (PSC, 2011; INEC, 2011; EU EOM, 2011; NDI, 2012). This not only reduces the degree of INEC staff involvement with the electoral process but also the degree of connivance between electoral officials and politicians to alter the electoral outcome.<sup>73</sup> From the records available, I can say there are no reports of connivance to change a result between collation or returning officers and politicians.<sup>74</sup>

Similarly, the elections appear transparent and open to both partisan and non-partisan stakeholders. For example, INEC collaborated with civil society groups and created a social media situation room that monitored and reported directly to INEC HQs what was going on nationwide (Asuni & Farris, 2012).<sup>75</sup> Also, The Commission made public for the first time the arrest of 870,000 individuals accused of electoral misconduct out of which 200 were successfully prosecuted (INEC 2011).<sup>76</sup> This may appear negligible, but considering that from 1999 to 2007 there is no trace of a

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<sup>73</sup> 2<sup>nd</sup> interview with INEC official, 1<sup>st</sup> December 2012.

<sup>74</sup> On the contrary there was a report by local media that the governorship election returning officer in Zamfara State refused an attempt to bribe him and change the elections.

<sup>75</sup> The report of the activities of this room can be found at [Tracking social media: The 2011 Nigerian Elections and Situation Room](#).

<sup>76</sup> Eleven further prosecutions were recently made public, making the total 211, detail available online: [www.inecnigeria.org](http://www.inecnigeria.org).

single record of prosecution of any electoral offender in Nigeria by any commission, then 200 is commendable. Among the cases prosecuted are the cases of two ad hoc staff and one security officer in Cross River state who were prosecuted for the illegal relocating of a registration centre to the residence of a local politician and the case of three INEC staff arrested for stealing five DDC machines in Niger state (NDI, 2012, p.25).

However, as mentioned earlier, there are others who do not see any difference between the conducting of the elections in 2007 and 2011. A respondent recollects that:

The foundation for clean elections which is the voter register was messed up because of time problems. The registration, technology and everything is second rated and up until today, INEC do not have a biometric voter register. They are lying, they do not have it.<sup>77</sup>

Evidence however indicates that these allegations are unfounded as unfolding realities during the elections and has recently proved the existence of a biometric voter list. If we assume the reference here is to a comprehensive biometric voter register breakdown from national, states, local governments, wards and down to polling units, then such is yet to be made public because the cross matching is not yet over (INEC State Public Relations Officer, 2013; Kuna, 2013).<sup>78</sup> However, on the other hand, recent developments substantiate the existence of a comprehensive state by state and local government by local government voter list. For example, in the last concluded Osun state governorship elections, INEC provided a comprehensive result breakdown according to the local government with the actual number of registered eligible voters.<sup>79</sup> Also, The

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<sup>77</sup> Interviewed with INEC Chairperson, 13<sup>th</sup> September 2012.

<sup>78</sup> These are follow-up telephone calls made on 25/09/2013 @ 11:05 & 11:33am.

<sup>79</sup> Result available at [www.inecnigeria.org](http://www.inecnigeria.org).

Commission has long embarked on a nationwide distribution of the micro chipped voter cards which is another indication of the existence of a valid voter register.

Like previous commissions, in 2011 INEC also faced some internal challenges of authority. The Commission was said to be facing the problem of over delegation of authority under Jega. A staff member of The Commission revealed that as in 2011, INEC is built on various independent standing committees that had no connection to one another. Each committee works without consideration of the activities of the other. The chairman, he said ‘believes he is still in the university system where everything is delegated to committees’ (RERC, 2012). The feeling within The Commission is the chairman and his team are ‘alone in his crusade for a new INEC’ (RERC, 2012, p.82). While such feelings communicate organisational challenges, they could also be an expression of dissatisfaction over positive and significant transformations aimed at changing the old order of ‘business as usual’. This might inform some respondents’ views that it would be difficult for Jega to make any positive change in the conduct of elections as he maintained a percentage of the commission’s old staff. An ardent advocate of this position urged that Jega should:

... sack all the staff in INEC. Just tell them to go to the Head of Service for posting and advertise. Go to every state and interview people, there are thousands of unemployed graduates, there are hundreds of bank managers, employees in telecom companies that would want to join a public service, hire fresh people, ... train [them] and begin a fresh.<sup>80</sup>

This sounds like a good and fresh beginning, however, it would have its own negative effects on The Commission and elections. Perhaps regardless of the progress recorded it might not be

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<sup>80</sup> Interview with the INEC Chairperson, 13<sup>th</sup> September 2012.



welcomed by the majority of public opinion as it could trigger massive retrenchment in the country's civil service.

*c) Financial Autonomy*

The security of funds for electoral commissions, whatever the sources or method of disbursement, is a common challenge for almost all electoral commissions in Africa. Finance was used to exert influence over the administrative powers of the Directorate General for Electoral Process (DGAPE) and the National Electoral Commission (CNE) in Cape Verde (Fall, 2011). In Benin, the *Commissio Electorale Nationale Autonome* (CENA) had to wait for two months and a court order before funds were realised during the 2006 presidential elections and had to observe strict financial rules before procurements were reimbursed during the 2008 local government and municipal elections (Hounkpe, Benin, 2011). Also, the Electoral Commission of Ghana (ECG) was destabilised and had to reschedule the voter registration exercise in the 2008 election (Hounkpe, 2011) just as funds were withdrawn to force the Zanzibar Electoral Commission to accept identity cards for voters' registration when it wanted to use birth certificates (Makulilo, 2011). Similarly, a fiscal stereotype is what characterised INEC during the 2007 election, as discussed above.

Subsequently, and to safeguard The Commission and guarantee its independence, the 1999 constitution (as amended) placed The Commission on first-line-charge.<sup>81</sup> This provides The Commission with the required formal fiscal autonomy. In fact, in comparison to other electoral

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<sup>81</sup> Section 81 was amended by substituting the existing subsection (3) of the Act with a new subsection. This is a process of deducting the budgetary allocation of an institution directly from the federation account to a separate account which the institution has complete control over.

commissions, INEC looks more financially independent. The budgets of DGAPE and CNE, for example, are subject to the approval of the executive and parliament in Cape Verde. While CENA, in Benin is on first-line-charge, disbursement is often delayed or made difficult by audit mechanisms (Hounkpe, 2011). Similarly, the Electoral Commission of Ghana (ECG) while autonomous to a degree cannot be compared to INEC financially. The ECG is dependent on development partner financing which is not sustainable and could lead to a serious democratic crisis for the country (Hounkpe, 2011, pp.92-94).

However, electoral commissions have been financially frustrated even when they have legal fiscal protection. In fact, it can be argued that INEC could be disappointed, as CENA was in Benin in 2006. Yet, INEC's financial autonomy in the 2011 election is a complete departure from its previous experiences when it had to struggle with the ill-timed release of funds (INEC, 2007, p.51). On the contrary, The Commission during the 2011 election '... computed the financial requirements for conducting a successful voter register and election and demanded 87 billion Naira [equivalent to £342,519,685.039]<sup>82</sup> and what we requested was given to us. So quite rightly, the issue of finance was not a problem.'<sup>83</sup> In fact, adding the commission's main and supplementary electoral budget provisions of N111,091,469,410 and the electoral recurrent expenditure of N24,801,481,539 the grand total stands at N135,892,950,949 (INEC, 2011, pp.8-9).

Therefore, money was provided and The Commission was ready well ahead of the registration exercise. Almost all domestic and foreign observers, opposition parties, election stakeholders and

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<sup>82</sup> This is at the 254 Naira per £1 exchange rate.

<sup>83</sup> Interview with the INEC Chairperson, 13<sup>th</sup> September 2012.

academics have commented on its level of preparations. The systematic deployment of all categories of registration and electoral officials has been applauded (PSC, 2012; EU EOM, 2011; NDI, 2012). In plain sight, the feasible explanation is the first-line-charge provision under which INEC conducted the 2011 election.

Also, the achieved quality of the registration and electoral conduct was ascribed to the efficient logistical arrangements which are not possible without finance. The logistic indices alone indicate the absence of undue delay in the release of funds. For example, INEC procured 232,000 DDC machines, cameras and printers and had them delivered as early as the 29<sup>th</sup> of November 2010; recruited and trained 368,812 NYSC presiding officers; purchased 9,000 units of 6.5 KVA generating sets as a standby in case of battery failure and 150,000 collapsible ballot boxes; and made operational and functional during the presidential, gubernatorial and other elections 119,973 polling units (PCS, 2012; INEC, 2012; NDI, 2012; EU EOM, 2012). In fact, for the National Assembly, presidential, governorship and state assembly elections, The Commission used a total of 1,629,899 people as returning, collation, supervisory presiding and presiding officers, in addition to assistant presiding officers I & II and security personnel.<sup>84</sup> This seems a possible explanation for the surge in 2011, as the voter list was far beyond the 63 million estimated and close to 74 million registered eligible voters. This was after the public display of the new voter register which had about 870,613 duplicate entries removed (NDI, 2012, EUEOM, 2011, Awowole-Browne, 2011).

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<sup>84</sup> Personal email exchange with INEC staff from the electoral institute.

Some recent developments, however, are threatening this progress. For example, as against the first-line-charge which The Commission was placed on in 2011, the federal government has introduced a new fiscal policy – the Centralised Payment System. Under this policy, the government is pooling into one Central Bank Account all the funds of federal agencies and each agency is expected to draw from that fund. The policy, INEC contends, violates existing legal provisions.<sup>85</sup> This is not a welcome development as it could slow down the independence of The Commission and by extension the quality of the elections. In conclusion, it is no exaggeration to say that the adequate provision of funds is a prerequisite for an autonomous electoral commission free from excessive incumbent meddling and beyond the pressures from politicians. In fact, to use a respondent's viewpoint, compared to the 2011 election, the 2007 election was stage-managed by the late release of funds.<sup>86</sup>

### *4.3 Conclusion*

The foregoing reveals that the successful and impartial management of credible elections by an EMB depends on its autonomy from the government (Mozaffar, 2002). However, the story for the autonomy of EMBs in Nigeria is imprecise when restricted to the formal delegation of elections management to non-partisan professionals and political power dynamics leading to their creation.<sup>87</sup> In particular, Mozaffar (2002) is right about the influence of path contingency, ethno political cleavages and political negotiations among elites as some important factors in explaining the choice of what model of EMB to operate. However, the degree of independence of an electoral

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<sup>85</sup> Interview with the INEC Chairperson, 13<sup>th</sup> September 2012.

<sup>86</sup> Interview conducted with the TMG official on 23<sup>rd</sup> August 2012.

<sup>87</sup> Mozaffar (2002); Hartlyn, McCoy, & Mustillo (2008); Birch (2011).

commission, as Gazibo (2006), Makulilo (2011) and Kambale (2011) indicated, requires following the power dynamics that characterised the emergence of EMBs down to their operational powers and functions, legal institutional jurisdictions and their *de facto* financial strength. Indeed, despite being designed as an autonomous organisation, the modes and requirements for the appointment of INEC's principal officials, its location within the formal structure of government and financial status during the 2007 election have significantly undermined its authority. The president's ultimate control over the appointment of INEC officials is among the major challenges to the commission's institutional authority before and during the 2007 elections. Although, the president still retains this power, subjecting the appointment of RECs to legislative approval and the removal of party membership as a requirement for appointment has raised the institutional autonomy of the commission. Also, the 2010 constitutional amendments made it clear that the administrative and operational activities of The Commission are no longer under presidential or other ministerial scrutiny. These changes have significantly detached The Commission from the executive, raising its integrity in the public eye.<sup>88</sup> Indeed, it is observed that the greatest challenge for INEC and the credibility of elections in Nigeria is in the ability of The Commission to convince Nigerians that it is indeed free from incumbents or outside meddling (TMG, 2003; EU EOM, 2007). This supports the view that the task of electoral authorities especially in the transitional regime is that of performing '... their duties in a way that dissipates suspicions over their political neutrality' (Mozaffar & Schedler, 2002).

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<sup>88</sup> This is very important considering that Nigerians perceived electoral integrity largely from the performance of the electoral commission (Kerr, 2013).

In addition, it indicates that organisational excellence is difficult to achieve in financial dependency. A possible explanation for what ruins the administration and credibility of the 2007 election and raises the quality of the 2011 election is the fiscal independence which INEC lacked and enjoyed in the 2007 and 2011 elections respectively. Various respondents, election observers and The Commission express the devastating influence of the delay in the release of funds on the commission's electoral preparations, logistics and performance. For example, both the failures and successes recorded during the voter registration exercise in the build up to the 2007 and 2011 elections, respectively, have been traced to a shortage of funds. This shows that in the context of limited finance, achieving optimum effectiveness and impartiality is difficult for all EMBs. Moreover, elections are expensive activities and the budget is the fulcrum of any organisational success (López-Pintor, 2000). Therefore, in the face of Africa's neo-patrimonial politics where the winner takes all politics prevails it will be difficult to build an independent EMB if it is financially controlled by the incumbent. Indeed, elections are democratic '... when the administration is sufficiently competent and resourceful to take specific precautions against fraud in voting and vote counting' (Diamond, 2002, p. 29).

In short, the substantial improvement in the autonomy of the electoral commission seems to have led to the validation of the national voter list which enhances the degree of citizen's participation in the 2011 election. Also, it improves the playing field for effective political engagement and contestation among electoral rivals, enhancing the capacity of the oppositions to compete. This might be the reason why the majority of Nigerians accepted the 2011 election over the 2007 election as free and fair. Further, it shows that the effectiveness of the electoral institution in Nigeria depends on its independence from the government in terms of operational powers and

functions, financial and institutional autonomy in addition to its location within the formal structure of government. Although, the successful story of the 2011 election and the failures of the 2007 election have been linked to political will, patriotism and merged with meaningful popular and military contributions (Akhaine, 2011) and garrison and godfather politics (Omotola, 2007; 2009), evidence still shows the trio of factors provide better explanations. Indeed, experience across Africa highlights the significance of the electoral commission in setting socio-political interests and creating political *lock-in* effects<sup>89</sup> (Gazibo, 2006). It could be argued that the call for electoral reforms before and immediately after the 2007 election and beyond in Nigeria symbolises the presence of this situation.

However, organisational failures could ruin the achievements of autonomous electoral commissions. Often, the failures of electoral institutions are manifested more at the level of electoral implementation. As such, the democratic quality of elections also depends on how well the electoral cycles are managed. The next chapter builds on this contention.

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<sup>89</sup> This refers to the potential for resistance against changes generated by pre-existing institutional structures and interests that are crystallised within a system.

## *Chapter 5 Parts of a Whole: Counting the Electoral Cycle*

The administration of elections involves a very wide and complex set of activities. The formal declaration of every election result is preceded by the management, organisation and execution of various sets of mutually dependent activities that establish the political arena within which voting and electoral competition take place<sup>1</sup> Thus, to understand the democratic quality of elections, we must examine the dynamics behind the different components that constitute the electoral cycle.<sup>2</sup> Here, the notion of the electoral cycle is examined under five sets of activities: electoral logistics, candidate nomination, electoral campaigns and media coverage, voting, vote counting and the declaration of results which are salient in the administration of elections in Nigeria.<sup>3</sup>

This chapter examines the impact of well-managed electoral cycles on electoral participation, the presence or absence of competition and perceived legitimacy which are clear indicators of a democratic election. As the literature indicates, elections can be manipulated by political actors – incumbents in particular – well before the declaration of the winner.<sup>4</sup> Moreover, the demographic, political and institutional contexts of Nigeria as discussed in Chapter Two can provide political actors with a fragile electorate that is vulnerable to manipulation in several ways, such as vote buying and limiting the entry of formidable candidates. In addition, the electoral legal regime is not helpful either, making it easy for incumbents to control the coordination and organisation of

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<sup>1</sup> For more on this see for example: Mozaffar & Schedler, 2002; Norris, 2013; Norris, Frank, & Coma, 2013; Schedler, 2002; Elklit & Reynolds, 2005 & 2002.

<sup>2</sup> Electoral cycle refers to the activities that take place during the election period proper. This categorisation is based on the understanding of electoral governance as a rule application explained by Mozaffar & Schedler, (2002, p.8, Table 1) and as classified by the ACE Project

<http://aceproject.org/ero-en/topics/electoral-management/electoral%20cycle.JPG/view>.

<sup>3</sup> ERC, 2008.

<sup>4</sup> Schedler, 2002; Norris, Frank, & Coma, 2013; Fabrice, 2003; Darholff, 2011; Lopez-Pintor, 2010; Vickery & Shein, 2012.



the electoral process. This is the subject of the next section. This section shows that in the 2007 elections, there is a clear indication of deliberate attempts to ensure that electoral outcomes favoured the ruling party. By contrast, the implementation and coordination of the 2011 election showcases openness and commitment to fair engagements. The administration of the elections has shown a clear commitment to democratic principles and the readiness to accept challenges while acknowledging its shortfalls.

### *5.1 Electoral Cycles: The 2007 Elections*

#### *a) Neutral & Efficient Logistics*

Elections are democratic when they provide all eligible voters with the chance to participate in the selection of those who occupy positions of authority (Goodwill-Gill, 2006). This is provided under the term suffrage which is the right given to an adult individual to participate in the governing of the society. Suffrage, as indicated earlier, has long been established in Nigeria.<sup>5</sup>

INEC, as we have seen in the previous chapter, is mandated with the compilation, updating and maintenance of the list of all eligible voters in Nigeria,<sup>6</sup> but examining the 2007 election showcases that The Commission failed to achieve these obligations in two key ways. Firstly, it failed to ensure a simple, easy and accessible registration process. Numerous problems beset the registration process which could be linked to logistic failures. Voters across the country were reported to have had difficulty registering. For instance, a congress member was reported as

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<sup>5</sup> The Electoral Act 2006 (as amended), section 13 (1 a, b, c, d, and e) and section 12 (1 a, b, c, d, and, e) for the amended version (2010) provides that any person who has attained 18 years of age, is a resident in Nigeria and presented himself to a registration officer shall be registered as a voter.

<sup>6</sup> Section 10 (1) of the 2006 Act and section 9 (1, 2, 3, 4 and 5) of the 2010 Act (as amended).

describing to the then commission's Chairperson Maurice Iwu that "the machine takes about 10 minutes to register one voter ... and then the ink runs out. [When] I went to do my registration, [he continued], I gave the INEC official my date of birth as 1958 and the machine recorded 1969 ten times, ten times" (LDC, 2009, p.37). Other eligible voters confirmed to foreign observers that 'they were not able to register because of what registration officials described to them as technical difficulties including inadequate ink and run-down batteries for the DDC machines procured especially for the exercise.'<sup>7</sup> Another public official who requested anonymity told domestic monitors that 'he had to stand in the queue for over an hour under the sun while the battery for the DDC machine at his registration unit was charged' (LDC, 2009, p.38). Indeed, the registration exercise is believed by both foreign and domestic observers to have experienced significant deficits which made many doubt the declared 61 million voters registered (TMG 2007, pp.71-77; LDC 2009, pp.34-39; EU EOM 2007, pp.13-16; NDI 2008, pp.13-18; & HRW 2007, pp.24-26).

Also, observers indicated that the problems with the registration could result in tension during elections and may disenfranchise a significant number of voters while perpetuating electoral frauds. For instance, domestic and foreign observers reported that the national voter register used during the elections contained substantial incidences of underage, double, wrong and multiple entries, many with missing or blurred pictures in Delta, Kogi and Oyo states which disenfranchised a proportion of the voters whose identity could not be ascertained by electoral officials and party agents (EU EOM, 2007, p.16). In addition, local observers reported several incidences of voter disenfranchisement in the states of Anambra, Borno, Kebbi and Edo. A civil rights activist for

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<sup>7</sup> HRW interviewed residents in Ibadan (Oyo state) on February 8, 2007, Abuja (the FCT) on February 20, 2007 and Awka (Anambra state), on February 16, 2007, see (HRW, 2007, pp.24-25).

example revealed that, in Anambra state, eligible and registered voters went to the poll carrying their voter cards but could not vote as their names were not included in the electoral register.<sup>8</sup> One voter told TMG that:

... *wen dey* carry the place we go register go far, how I go leave my business begin *waka go dat* far? *Wetin* I go chop *wit* my *pikin wen* I go come back? Even *sef*, I *don waka* reach but I no see anybody o! (TMG, 2007, p.111).

In other states the registration problems made it easy for politicians to perpetuate multiple voting. A typical example is the case of a former military vice president who registered four times and was accredited four times and voted four times.<sup>9</sup> Similarly, TMG reported that it interviewed many people who were ready to participate in the elections but ‘the system has made it impossible for them to do so, due to the long hours of waiting and the long trek’ (TMG, 2007, p.111) in search of their names as registration was handled randomly<sup>10</sup> and registration machines were moved without a proper schedule.<sup>11</sup>

These noticeable troubles created suspicion and distrust among observers and Nigerians alike. Many doubted the credibility of the electoral process. For example, a civil society group engaged in electoral activities expressed that ‘it was clear that INEC was administratively not prepared for the elections. This was evident in the poor handling of pre-election activities that further exposed it to multiple criticisms’ and that the 2007 elections ‘...assumed the features of warfare rather than open and civil competition for political power’ (TMG, 2007, p.155). For other citizens, such as

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<sup>8</sup> These voters’ identification numbers (VIN) are 100822701611 for Roseline, Patrick’s is 10082700153, Innocent’s is 30101100334, Rev. Christian’s is 30501400148, Veronica’s is 100822700237, Obinuju’s is 30116100184 and Uche’s is 10045704508 (Ndigwe, 2009, pp. 192-198).

<sup>9</sup> INEC vs. Oshimole (CA/B/179A/2007&CA/B/179B/2007) delivered on the 20<sup>th</sup> of March 2008.

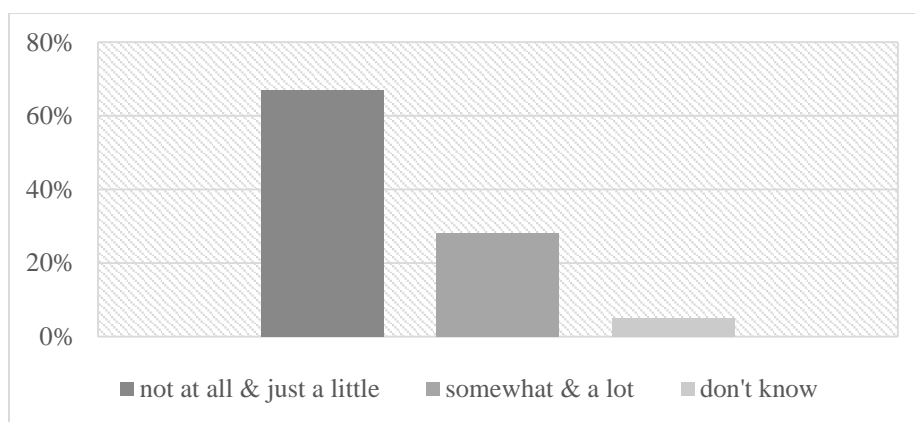
<sup>10</sup> Interview with an official of CEDDERT, 16<sup>th</sup> November 2012.

<sup>11</sup> HRW interview with the Director of Registration, INEC, Abuja, February 22, 2007.

those living in the urban centres, the registration of millions of voters in the waning days of the exercise “might technically be possible, but it is hard to imagine that it actually took place.”<sup>12</sup>

To get a sense of public views on the INEC, Figure 5.1 is a result of a survey conducted immediately after the elections, which asked respondents how much they trust the electoral commission. It shows that the majority of Nigerians (67%) did not trust The Commission in the 2007 election. Just under one third (28%) appear to have a reasonable regard of INEC in the 2007 election. Even if we could not establish a clear linkage between the poor management of the registration with electoral participation, we could expect this to have an effect on the perceived legitimacy of the elections.

*Figure 5.1 Trust in Independent National Electoral Commission*



*Source:* Afrobarometer Round 4 (n = 2324)<sup>13</sup>

For example, a seasoned academic described the entire electoral process as a “direct capture” of peoples’ mandates. He indicated that at the beginning the idea of a direct capturing machine seems

<sup>12</sup> H.R.W interview with an Abuja resident, [Date Withheld], February 2007, p.27).

<sup>13</sup> The Survey asked respondents: “How much do you trust ... the National Electoral Commission of country?”

like capturing the picture and biometric data of eligible voters directly, but unknown to Nigerians, it is a grand strategy meant to rig the 2007 election and therefore capture the sovereignty of Nigerians who voted in the elections (Ibeanu, 2009).

Secondly, the management of the electoral procedures further complicates scepticism as partisan and non-partisan actors were discouraged and denied access to critical electoral schedules. For example, INEC refused to give political parties and civil society groups copies of the register or to display it for the public to raise objections or corrections. This forced all major political parties to submit a petition as co-plaintiffs filed against The Commission by the National Democratic Party (NDP) (NDI, 2007). Many citizens who were ready to participate in the elections were left to wander from one polling unit to another searching for their names before they could exercise their civic duties. This is perhaps because the registration was randomly handled<sup>14</sup> and registration machines were moved without a proper schedule.<sup>15</sup> This contradicts the requirement that electoral processes need to ensure the provision of sufficient polling units whose location is well advertised and accessible to each at a convenient time (Birch, 2011).

In short, the 2007 electoral logistics could be said to have deprived some people of their right to vote. This is because giving each citizen his voting right requires every eligible voter to vote at his appropriate and available time by making the registration/voting procedure easy, simple and possible for all (IDEA, 2002; Goodwill-Gill, 2006). There is evidence that many including the

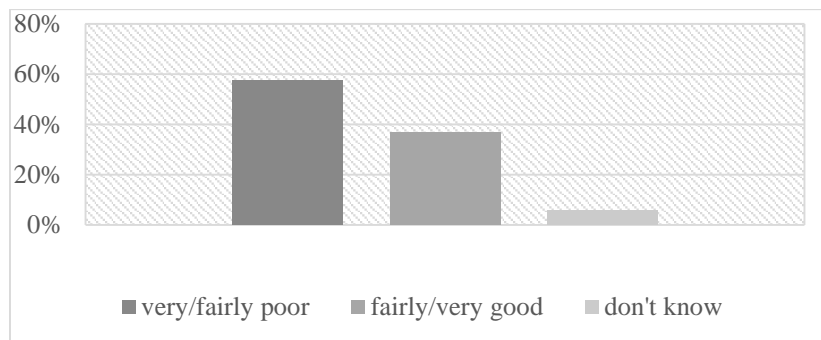
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<sup>14</sup> Interview with an official of CEDDERT, 16<sup>th</sup> November 2012.

<sup>15</sup> HRW interview with Tunde Adesina, Director of Registration, INEC, Abuja, February 22, 2007.

majority of the Nigerian citizenry believe the performance of the electoral commission to be poor, making it difficult for the elections to reflect peoples' preferences.

*Figure 5.2 INEC's Performance in the April 2007 Election*



*Source:* Afrobarometer Round 4 (n = 2324)<sup>16</sup>

Figure 5.2 shows that the majority (57%) of Nigerians believed the performance of The Commission during the elections to be very/fairly poor. In fact, less than ten percent (10%) seem comfortable with the commission's activities during the elections. This could be the rationale behind the use of the term 'undue difficulty' so as to describe voter inclusiveness (Birch, 2011). This and other practical experience across Africa support the view that African leaders use the inaccuracy of the voter list as a tool for electoral windfalls. Other academic studies have catalogued instances of the use of an inflated voter register to win elections in Ghana (Jockers, Kohnert, & Nugent, 2009, pp. 7-8). Similarly, evidence presented by Dorman on electoral politics in Zimbabwe between 1985 and 2000 indicated that the electoral roll in Harare "was so defective that it cannot be said that the electoral process was itself not flawed" (Dorman, 2006, pp. 9-10). Such

<sup>16</sup> The Survey asked respondents about INEC performance in April 2007 elections.

electoral manipulations could reasonably affect the degree of public acceptance of the quality of the elections and at the same time could have an effect on electoral participation and competition.

*b) Fair Candidate Nomination*

Candidate selection is a pivotal aspect of participatory and competitive elections. While the literature on authoritarian elections indicated that incumbents could manipulate elections by limiting the support, capacity and entry of the opposition (Gandhi & Lust-Okar, 2009, pp. 412-413), empirical evidence is rare; perhaps because it is difficult to gather evidence. The 2007 election in Nigeria supplements this gap. In Nigeria, the law provides that every qualified person<sup>17</sup> has the right to contest an election.<sup>18</sup> However, in the build-up to the 2007 election several contestants were denied their right to access and present their agendas to party members. Presidential aspirants were allegedly not allowed by party caucus and the incumbent president in particular to present themselves before and during the presidential convention of the ruling PDP. For example, potential presidential contestants from the South South states such as Peter Odili, Donald Duke and Victor Attah of Rivers, Cross River and Akwa Ibom states that they were all, reportedly, threatened with charges of corruption by the EFCC and forced to accept the candidature of the president's anointed candidate (Isumonah, 2012, p. 53). Others, such as the former military president Ibrahim Babangida was refused approval by the Nigeria Police to launch his presidential

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<sup>17</sup> The law provided that every person sponsored by a political party, who has attained a minimum formal education of a school leaving certificate or the equivalent and has not been indicted for embezzlement or fraud can contest an election (1999 Constitution sections (66 (1&2); 106 – 107; 131 (a-d) and 137 (1&2); 177 (a-d); 182 (1&2)).

<sup>18</sup> These requirements have been questioned by foreign observers, arguing that it contradicts the principle that prohibits any form of unreasonable restriction or compulsion on people in the exercise of their political and civil rights. Article 25 stipulated that: 'The right to participate in public affairs, voting rights and the right of equal access to public services: The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or specific parties'. However, no respondents in Nigeria expressed such feelings, not even the civil society groups or politicians. Perhaps the provisions are regarded as necessary for the sanity of the process.

bid in Kaduna. The contestant, according to media sources, was asked by the then president to ‘... jettison his ambition and join forces with him to shop for a younger candidate from among the governors’ (Oni & Fabiyi, 2011). Not surprisingly, all PDP governors unanimously announced on the 26<sup>th</sup> of December 2006 that ‘after due consideration of all presidential aspirants on the platform of the PDP, [they] resolved to support the candidature of Alhaji Umar Musa Yar’adua. He now becomes the party’s consensus candidate’ (The Guardians, December 16, 2006, p.1).<sup>19</sup>

Also, the process has been perceived to be unfair to female aspirants. Many who have won their party primaries were either removed or substituted by party elites. For example, after the assassination of her husband, a female aspirant inherited his campaign apparatuses and won her party primaries in Lagos state only to be rejected by the PDP caucus (NDI 2007, p.22; TMG, 2007). Others were asked ‘... to step down for men otherwise they were going to be brutally dealt with and as a matter of fact ... some of them who refused to step down even though they won, [their] tickets were snatched and given to men (TMG, 2007, p.115). Some among them who decided to move and secure nomination in other parties won their seats. For example, a female candidate who won the PDP senatorial primaries but was substituted left the party for ANPP, contested the election and won against the PDP-favoured candidate (TMG, 2007; Daily Independence, 2009).

In addition, there were instances where aspirants were given the wrong address for party primaries. For instance, in Benue state, the venue for the PDP primary was kept a secret from some aspirants. One of them complained ‘[w]e have been to more than 10 places since the original scheduled place

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<sup>19</sup> This incidence was also reported by NDI, 2008; EUEOM, 2007; TMG, 2007; LDC, 2009.



and time for the primaries, only to be told later that the primaries had been concluded' (TMG, 2007, p.115). Such misinformation is a clear indication of a tactical way of 'vetting candidates and limiting their abilities to campaign' (Gandhi & Lust-Okar, 2009, p. 413). It is, as a respondent explained, a deliberate strategy to get rid of the unwanted candidates and contradicts the requirement that every citizen should be given an equal right and opportunity to participate.<sup>20</sup> It is also not in tune with the requirement that aside from the formal barriers of legal qualification to contest elections, candidates and parties should have an equal opportunity to present themselves for elections without any discrimination in terms of gender, religion, identity or social status (Goodwill-Gill, 2006; Birch, 2011).

Similarly, the candidate nomination is blamed for being controlled by political elites. For example, in Lagos state, 11 gubernatorial contestants left the ruling AD<sup>21</sup> in protest against a candidate imposition by the then incumbent. The party's gubernatorial candidate left the party and contested for the same position under the Labour Party (NDI, 2007). Also in Sokoto state, the deputy governor, after winning an in-house fight in ANPP against the incumbent governor, left ANPP and joined PDP (the ruling party at the centre). This movement caused serious legal issues after the elections (I shall discuss this in greater depth in the next chapter).

While this evidence might appear anecdotal, it is interesting to note several academic studies that have documented such incidences. For instance, it is reported that many aggrieved PDP members in Abia state 'could not condone the odds in the party especially when their voices and opinions

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<sup>20</sup> Interview with CDD official, 13th November 2012.

<sup>21</sup> This is because at this time the AD allied with some PDP defections to form the AC.

were relegated to the dust by the leadership (political machine) of the party' (Iwuamadi, 2009, p. 157). Thus, they formed the Progressive People's Alliance (PPA) which won the elections against the PDP and its 2007 Abia Project Team.<sup>22</sup> The worst case of over influence of political elites in candidate selection presented itself in Anambra state. Here the acclaimed "godfather"<sup>23</sup> was reported to have said: 'I am the greatest of all godfathers in Nigeria because this is the first time one single individual, single-handedly, has put in position every politician in a state.'<sup>24</sup> Also, in the state of Ondo the then president Obasanjo told newsmen in respect of a contestant to the governorship elections that 'I begged and begged him not to leave the party [PDP] and not to resign. He said if he did not, his people would kill him. Now he has gone, the EFCC is looking for him everywhere. Let me see how he will become governor with the EFCC looking for him.'<sup>25</sup> In short, this indicates how candidate nomination was mishandled by political parties and allowed for the triumph of godfather politics in almost all states of the federation (Ayoode, 2008; Omotola, 2007; 2009; Ikpe, 2013).

In short, it has been argued that much of the political tension that characterised the 2007 election revolved around internal party politics. In particular, one example can be given of the killings of key candidates such as the gubernatorial candidates of PDP in Ekiti and Lagos states (TMG, 2007, p.77).<sup>26</sup> Such practices destroy trust and exacerbate the loss of confidence among party members

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<sup>22</sup> This team is composed of prominent personalities who served in different capacities in the federal government and as national party officials including former national chairmen see also (Iwuamadi, 2009, p. 157) supra note 7.

<sup>23</sup> Godfathers are political investors whose credibility can sway political support such that they determine who becomes what in a party and a polity as a whole (Omotola, 2007; Smah, 2008; Hoffmann, 2010; Ikpe, 2013).

<sup>24</sup> Sunday Champion, June 8, 2003 and for more on Anambra politics see (Smah, 2008; Ibeanu, 2009; Ikpe, 2013; Ndigwe, 2009).

<sup>25</sup> Daily Trust, February 12<sup>th</sup>, 2007. *Mimiko and Obasanjo's Utterance*. Lagos.

<sup>26</sup> Ayo Daramola was assassinated in his bedroom in Ijan-Ekiti and Funsho Williams was also found on July 27, 2006 at his home tied up, stabbed and strangled in Lagos.

and caucuses. Explaining the crises of political succession in other African states, Nic Cheeseman attributed the infighting witnessed by the ruling Sierra Leone People's Party (SLPP) between 2005 and 2008, Kenya African National Union (KANU) in the run up to the 2002 election and the New Patriotic Party (NPP) of Ghana in 2008 to incumbents attempting to impose their favoured successors (Cheeseman, 2010, pp. 143-145).

*c) Electoral Campaign and Media Coverage*

The media is a significant instrument in credible elections. Limiting a candidate's or party's accessibility to the media is equivalent to controlling his or its electoral fortunes. Although candidates and parties in the 2007 election campaigned actively, with each employing different strategies like public rallies, vehicle motorcades with loud speakers, political gatherings, door to door visits, billboards, posters and the media to get to the electorate, the campaign is perceived to be skewed in favour of the ruling party. The PDP and its presidential candidate were allegedly financed and helped by state resources. The party and its candidate had the privilege of using the presidential air jet to cover the country as the president chaired the presidential campaign team. This advantage strengthened the party's financial muscle while other parties were struggling to reach the country's population (TMG, 2007, p.93). In fact, only a few parties – AC, ANPP and DPP - and their candidates were able to carry out a nation-wide campaign (NDI, 2007). This was partly because these parties had less financial strength compared to the other four who have some control over federal or state resources or both. Also, the chairmanship of the president was judged

to have encroached on other contestants' and peoples' right and freedom of movement as airports were closed whenever the president arrived or departed for security reasons (TMG, 2007, p.93).<sup>27</sup>

Also, the campaign witnessed different forms of intimidation and intra- and inter-party clashes. For instance, between February and March there were 13 violent cases. These included the killing of two supporters of the ANPP in Bauchi by, allegedly, members of the ruling PDP on the 2<sup>nd</sup> of February, the attack on the campaign team of the then PDP candidate of Lagos on the 10<sup>th</sup> of March, and the clash between ANPP and PDP party loyalists on the 15<sup>th</sup> of March in Katsina (TMG, 2007, p.78). In fact, the political atmosphere was very tense and politicians used provocative language in what ordinarily should have been a civilised affair. For Obasanjo, for example, the 2007 election was a 'do or die affair [and] a matter of life and death' and on two other occasions he said 'it would be a calamity for Nigerians if the PDP lost the 2007 elections.'<sup>28</sup> Responding to these threats, the AC threatened that 'if Atiku was not allowed to run there would be no election' (NDI, 2007, p.25). This could be interpreted to mean different things such as nationwide riots, violent demonstration or insecurity in general which would make the elections impossible, especially considering that people even within the government doubt the president's commitment to hand over power.<sup>29</sup>

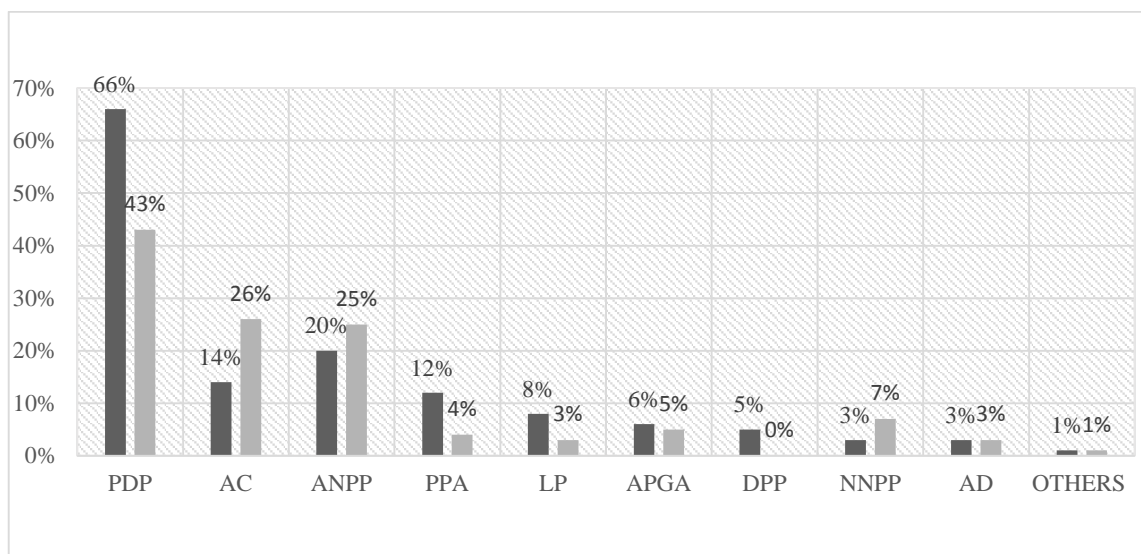
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<sup>27</sup> The famous lawyer and civil rights activist, the late chief Gani Fawehimi was reported to have said in respect to the campaign that: 'since the PDP kicked off its Presidential campaign on Saturday January 27th 2007, General Obasanjo has turned the entire exercise to the Obasanjo Presidential campaign. He has failed dismally to draw a line between official presidential duties and the electoral campaign for a Presidential candidate of his party, the PDP. He has virtually put Governor Musa Yar'adua in his pocket like an Australian kangaroo, using presidential jets, presidential security, presidential financial votes and all other paraphernalia of presidential authority to conduct the elections' (Fawehinmi, 2007).

<sup>28</sup> See Tenuche, (2009, pp.47–54) for details of language abuses in Nigerian politics.

<sup>29</sup> Interview with the former minister, 31<sup>st</sup> August 2012.

Figure 5.3 Campaign Coverage across Political Parties in the 2007 Election



Source: TMG, 2007, (pp.97-98)<sup>30</sup>

In addition, the media coverage of the campaign appears to be uneven and disproportionately covering the incumbent party. Figure 5.3 shows that the media did not conform to the democratic and legal requirement of the even distribution of coverage among contestants.<sup>31</sup> The horizontal or x axis lists different political parties whose campaign activities have been covered by two government-owned media houses: The Federal Radio Corporation of Nigeria (FRCN) popularly called The Radio Nigeria (symbolised in black bars) and The National Television Authority (NTA – symbolised in grey bars). The vertical or y axis represents the percentage coverage of the activities of each political party. The Figure shows that The Radio Nigeria (FRCN) Lagos, for example, only reports the activities of 22 out of 50 registered political parties in the country. It indicates that the PDP had the majority (66%) of all party activities reported by the station. Its

<sup>30</sup> The group carried out these activities from the 26<sup>th</sup> of March to the 31<sup>st</sup> of May 2007.

<sup>31</sup> Paragraph 5.2.6 of the broadcasting code stipulated that to observe the spirit of pluralism, there needs to be equal air time and belt allocation for political parties.

closest rival – the ANPP only received 20%. AC and PPA campaigns were only aired occasionally (signifying only a 14% and 12% reportage respectively). The remaining 18 political parties with presidential candidates were rarely reported (often less than 10%). In other words, 42 political parties in the country received less than 10% of the total media coverage or none at all. This is a demonstration of the over-representation of one party against other parties. Indeed, it indicates that the incumbent party was reported more than the remaining 49 political parties combined.

A similar pattern is visible for the national TV station. The station's political report covered the activities of 24 registered political parties out of 50 and the PDP had most (43%) of the campaign coverage compared to the remaining 23 political parties. Only two parties – AC and ANPP – received a quarter (25% and 26%) of the total reports in NTA. The remaining 26 political parties were not mentioned at all, confirming that the ruling party had the majority of the national media campaign coverage, something also confirmed by European observers who monitored the activities of NTA and Capital FM in Abuja (EU EOM, 2007, p.24).

This portrays the government-owned media as disproportionately attentive to the executive, perhaps because the institution is directly under the control of the Minister of Information who takes directives from the President.<sup>32</sup> It could be that the people appointed to serve public officers in these capacities tend to please and gratify the President who appoints them as part of his political patronage. Secondly, it could perhaps be argued that other parties are not committed to actively campaigning as the Nigerian Election Debate Group (NEDG) organised a live presidential debate

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<sup>32</sup> Section 13 of the Nigerian Television Act 2000 and Federal Radio Corporation of Nigeria (FRCN) (Amendment) Act 1991.

and sent invitations and guidelines for participation to all political parties with a candidate in the presidential race. The programme was aired live on both television and radio and participation was free, however, of the 24 political parties only the presidential candidates of ANPP and ADC, Muhammad Buhari and Pat Utomi, attained the programme. Others like Atiku of AC, Yar'adua of PDP and Orji Kalu of PPA did not accept the invitation (NDI, 2007, p.23). Perhaps they have less to offer the electorate or fear facing other contestants on a one-to-one basis. Otherwise, this was an opportunity for the political parties and candidates to sell their programmes for free to a national audience for 90 minutes. However, what seems obvious is that the ruling party enjoyed more coverage compared to others and this has limited the ability of other parties to campaign on an equal footing.

*d) Voting process*

Voting is a critical aspect of electoral cycles, and when mishandled it can affect the degree of participation and competition in an election. For many observers, voting in the 2007 election was fraudulent as political actors either as parties, candidates and sometimes electoral officials were perceived by election observers to perpetrate various forms of malpractices (TMG, 2007; LDC, 2009; NDI, 2007; EU EOM, 2007). “[B]etter elections increase participatory attitudes and rights protection; values that are likely to be difficult to dislodge” (Gandhi & Lust-Okar, 2009, p.415; cf. Birney, 2007, p.153 and Shi, 1999; Li, 2003). This includes, among other things, making sure that all the necessary materials required for voting to be held are provided in the required quantity and time. If this is not done, a number of eligible voters stand the chance of being disenfranchised.

In this regard, it is apparent that in all the three elections held on the 14<sup>th</sup>, 21<sup>st</sup> and 28<sup>th</sup> of April 2007, INEC failed to ensure a participatory democratic attitude among voters, let alone to protect their political rights. The commission, for instance, is reported to have failed to provide enough voting materials during the elections. During the legislative elections, for instance, the commission only provided between 25% and 40% of the required number of ballot papers in Edo state. Other sensitive electoral materials like results sheets (which in Nigeria are officially labelled Form EC8 series)<sup>33</sup> were either inadequate or not provided at all (EU EOM, 2007, p.32). For example it was reported that five hours into the commencement of voting ‘... no material had left Anambra East local government area (LGA) to anywhere [and] in Akwa South LGA, ... ballot boxes were brought without election materials. INEC officials soon left with the boxes without any elections taking place’ (PAC, 2007). A presiding officer revealed that ‘I am ready to do my job, but I do not have the appropriate materials. The register they gave me only has two names on it. It is not my fault’.<sup>34</sup> The acute shortage of electoral materials made it difficult for the elections to be held in many places.

In other places elections were extended until midnight and voters were subjected to unnecessary stress. For example, in Bauchi state, people waited in queues until midnight to exercise their voting rights (TMG, 2007). A respondent revealed that people had to volunteer and provide local lamps and rechargeable lanterns to light polling and collation centres. Others provided free food and

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<sup>33</sup> These forms in Nigeria are provided in the codified series of Form EC8A as the results sheet used at polling units, the EC8B series at ward collation level, EC8C series at local government collation level, EC8D at state collation level and EC8E at national collation level and each is further coded with i, ii and iii depending on the election, i.e. national and state assembly, governorship and presidential elections.

<sup>34</sup> This officer was interviewed by the Human Rights Watch in Awka, Anambra. See HRW, 2007 for this account as the unit in question was confirmed to have more than 100 registered voters.



drinking water while young people resorted to the vote protection strategy. The strategy requires a voter after casting his ballot vote to wait until counting, and afterwards to protect his vote by following the ballot boxes from the polling booth, to the ward, to the local/constituency and state government collation centres.<sup>35</sup> This mobilised youth set up unofficial road blocks to search vehicles and tracked illegal ballot papers during the governorship elections in the state.<sup>36</sup> Also, the group prevented politicians from entering the state collation centre including the then incumbent governor (Yau, 2009, p. 216).

Secondly, the voting process witnessed some sort of voter intimidation and deprivation of the peoples' rights. For instance, about 20 armed policemen stormed the house of a contestant in Billiri constituency, Gombe, stopped and refused to allow her to step out and vote (TMG, 2007, p.121).

Also, another female voter mourned that:

we are afraid for our dear lives, we don't want our children to become orphans since the elections were characterised by violent activities ranging from the snatching of ballot boxes to thumb printing in top class politicians' houses. How we go go vote *ini anoda* man's house, u wan make my husband tink sey *anoda tin* I go do for *anoda* man's house, so *tay e* go send me *comot* for *im* house (TMG, 2007, p.120).

This indicated that besides political intimidation, the voting process subjected some voters to psychological stress. This is because in a society like Nigeria, putting ballot boxes in the houses of politicians jeopardises the participation of women and active partisan politicians. Here women are only allowed to enter houses that have been approved by their husbands. Similarly, in a highly charged political atmosphere, active supporters of a given party might find it difficult to accept ballot boxes being placed inside the houses of political opponents. Frustrated by this manipulation,

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<sup>35</sup> A mobile telephone follow-up phone call discussion with a Federal Civil Servant on 3/01/2013.

<sup>36</sup> The Director of the Centre for Information Technology and Development (CITAD).

a group of women in black attire staged a demonstration on the 9<sup>th</sup> of May (after the elections) arguing that ‘... the gruesome failure of the 2007 [elections] was a national tragedy [and] the elections were grossly characterised by fraudulent and excessive rigging in addition to massive violence’ (TMG, 2007, p.124).

Last, according to international observers, the elections witnessed an indifferent security personnel who observed ballot box stuffing, stealing and the snatching of electoral materials but appeared ineffective in averting any sort of electoral fraud. For example, a former deputy governor was alleged to have led some party supporters to snatch ballot boxes and stuff them in full view of the security, voters, observers and foreign journalists. The police did nothing to improve the situation (EU EOM, 2007, p.30, note 76). Also, the same security apparatus refused to prevent ballot box snatching and stuffing in about 6 of the 25 local government areas of Ogun state (NDI, 2007; EU EOM, 2007). Accordingly, the elections recorded interesting turnouts of over 100% in some polling units. For example, the EU observers witnessed the counting of votes in a polling unit of 488 registered voters where only 58 people cast their vote. Yet, during the collation process these figures were changed to 100% turnout, with the ruling party receiving 400 votes. In another polling unit, the ruling party had 601 votes, although the total registered voters for the unit was 223 (EU EOM, 2007, pp.34-7).

#### *e) Vote Counting and Announcement*

The processes of vote collation, counting, tabulation and the declaration of results is another significant stage of the electoral cycle. It is a stage at which final attempts to change electoral outcomes take place. At this point incumbents struggled to ensure that they or their pre-selected

candidates emerged victorious. Because efforts to fabricate votes are mundane and often carried out with caution to conceal the possible effect on the outcome (Fabrice, 2003, pp. 246-247), this does not mean they cannot be observed. Moreover, sometimes incumbents become nervous and blindly cross-over the lines to increase vote scores. This seems to be what transpired in the 2007 election. In some states, observers documented different cases of altered results. For example, in Enugu and Abia states, result sheets were allegedly changed in favour of the ruling PDP in six polling units and presiding officers were found to be working on two different sets of result sheets, one with a low turnout<sup>37</sup> and another with unrealistic figures that exceeded the exact number of registered voters at a ward collation centre in Cross Rivers state (EU EOM, 2007, p. 33). This possibly explains the reports that the governorship elections in some states were announced by the INEC headquarters in Abuja while collation was still going on, for instance in Delta state (TMG, 2007; NDI, 2008; EU EOM, 2007).

Also, The Commission seems partisan that it returned as winners candidates who did not stand in the elections. For example, a non-contending PDP candidate was declared as the winner of Ondo South Senatorial District with 318,153 votes.<sup>38</sup> In addition, the results from five wards where elections were not held in Zamfara state were among the results used to declare the incumbent party in the state as the winner of the state's governorship elections (EU EOM, 2007, p.34). Similarly, some sources indicated that the presidential election result was announced while elections were still ongoing in many places (TMG, 2007; EU EOM, 2007). It is revealed that while

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<sup>37</sup> Note that voter turnout in Nigeria is calculated as the ration of votes by total number of registered voters per polling unit.

<sup>38</sup> See note 67 of (A Study of the Independent National Electoral Commission, 2010, p. 93).

Nigerians were following the collation of the presidential elections, the INEC Chair excused himself, disappeared and later returned and announced the winner.<sup>39</sup> It is said that the announcement was made when The Commission had only collated results from 12 states (EU EOM, 2007) of the federation. Assuming the announced winner scored the majority of the votes in all 12 states, this does not seem to fulfil the simple 2/3 majority requirement for winning elections in Nigeria. Moreover, some argued that since the declaration was made before the results from Kano and Lagos states were conveyed, then it is difficult to tell who scored the highest votes as these are the two states with the highest populations in the country.<sup>40</sup> A respondent argued that 12 of 36 will not in any way satisfy the constitutional requirement of 1/4 of votes cast in the election in each of the 2/3 of the 36 states including FCT.<sup>41</sup> Thus, for the opposition INEC became lawless in its conduct.<sup>42</sup>

The above indicates a consensus among election observers and interview respondents that the 2007 election suffered a serious case of integrity. There appears to have been some attempts to manipulate the elections and voters do not seem to have been given an adequate and equal chance to participate. Procedurally, the voter list seems to have been incomplete, as several candidates for key offices were allegedly discouraged to participate, perhaps to pave the way for anointed candidates. This corroborates the proposition that the political context has made it easy for elites to use state powers and resources to win elections by establishing patron-client relations. This demonstrates the observation that in the build up to the 2007 elections, the incumbent president

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<sup>39</sup> Interview with a former minister, 31<sup>st</sup> August 2012.

<sup>40</sup> Kano State has the largest population of 9.384 million in Nigeria with Lagos state coming second with 9.014 million people, according to the details of the 2006 population census [National Population Commission](#).

<sup>41</sup> Ibid.

<sup>42</sup> Interview with an opposition candidate, 26<sup>th</sup> July 2012.

had pre-arranged parties and perhaps the country's political future such that to win elections does not require the support provided by linking up with the constituencies (Isumonah, 2012) and for the PDP 'the public domain is the sole property of rulers and it is theirs to control as they please' (Ekeh, 1997, p. 90).

## *5.2 Electoral Cycles: The 2011 Elections*

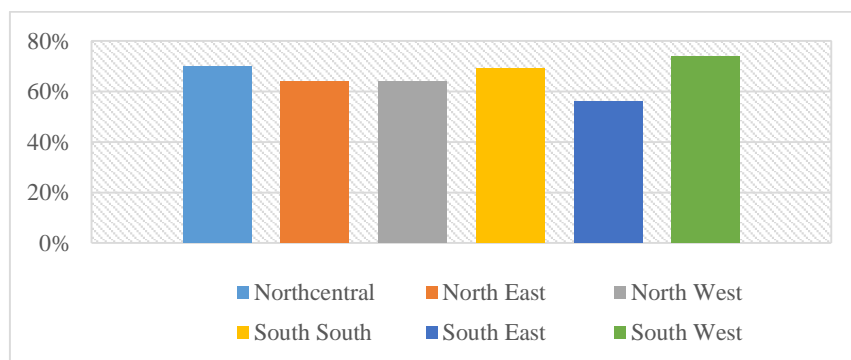
### *a) Neutral & Efficient logistics*

In contrast to the 2007 election, the electoral logistics in the 2011 election were well organised and INEC demonstrated a significant commitment towards an inclusive electoral process. For example, The Commission is said to have commenced voter registration with 98,000 DDC machines and recruited and trained 240,000 electoral personnel (NDI, 2011; EU EOM, 2011; Project Swift Count (PSC), 2011). A source within INEC confirmed that there were 132,000 not 98,000 machines and registration software was pre-installed on the machines at the commission's headquarters. The machines' Basic Inputs-Outputs System (BIOS) was then encrypted to limit any form of data alteration after deployment. In addition, each machine is given a coded number in accordance with its polling unit.<sup>43</sup> This way the possibility of moving a machine from one place to another could be easily spotted and reported. In other words, the chances of setting up illegal registration centres or stealing the machines, as reported in the case of the 2007 registration exercise, was believed to have been reduced.

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<sup>43</sup> Interview with the INEC official at INEC the Electoral Studies, 13<sup>th</sup> September 2012.

*Figure 5.4 Supply and Distribution of Registration Materials in 2011 Election*



*Source:* PSC, 2011

Also, registration materials were provided and distributed evenly across the country. Figure 5.4 presents the percentage of the supply of election materials across the six geopolitical zones of the country. The Y or vertical axis gives the percentage of registration materials allocated to each zone. It shows that each zone received enough registration materials for almost the whole region, with the majority of the zones getting close to 100%. The North Central, South South and South West (presented in blue, yellow and green bars on the x or horizontal axis), for example, received enough registration materials (70%, 69% and 74% respectively) in almost all areas visited within the regions. Accordingly, the remaining zones each received more than half. This logistic efficiency could partly explain the increase in the number of names on the national voter list from 61 million in 2007 to 73 million in 2011. Also, it provides an empirical explanation of the view that the availability of the registration materials and easily accessible registration centres are essential components of good elections (Birch, 2011, pp.21-22). Put differently, the realisation of the right and duty to vote begins with the electoral commission ensuring the adequate provision of registration materials to allow the registration of all eligible voters.

Similarly, the effectiveness of the logistic arrangements could be seen in INEC's determination to take responsibility for every part of the elections. For example, The Commission set Registration Area Centres in each ward of the federation. Each centre backed up all the data registered on a daily basis and provided overnight charging and storage facilities for registration machines, as each was powered by a 6.5 KVA generating set.<sup>44</sup> Thus, voters were able to register within their closest neighbourhood. While The Commission utilised other institutional supports such as the use of the Central Bank of Nigeria to receive, store and transport sensitive electoral materials from the airport to the 36 states of the federation and the 311 units of containers given to it by two companies as storage facilities for non-sensitive materials, it procured 550 Hilux double pick up vehicles, 60 boats for the riverine areas, 650 motorcycles and 10 IVECO 17 tonne capacity trucks to handle local electoral logistics.<sup>45</sup> Hence, for the national chairperson of The Commission as at 2011, INEC is '... independent of governments at the lower level.'<sup>46</sup>

However, this does not indicate the absence of difficulties as elections are almost always affected by errors stemming from different logistical challenges. For example, there were incidents of underage and multiple registrations. In the northern parts of the country, foreign observers reported that local communities forced registration officials to register minors (NDI, 2011; EU EOM, 2011).<sup>47</sup> Confirming this is the Registration and Election Review Committee (RERC) set up by INEC which reported that in Kano state, a participant at a town hall meeting revealed to the committee that he was in Yelwan Danziyal, a suburb of the city, when a registration official refused

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<sup>44</sup> Interview with an INEC official at the Institute for Electoral Studies, 13<sup>th</sup> September 2012.

<sup>45</sup> Interview note, 1<sup>st</sup> December 2012.

<sup>46</sup> Interview with the INEC Chairperson, 3<sup>th</sup> September 2012.

<sup>47</sup> PSC interim report of the 24<sup>th</sup> of January and the 1<sup>st</sup> of February 2011.

to register some underage voters but the community insisted, arguing that: ‘these are our children and they must register; either they are allowed to register or registration will not continue in the area’ (RERC, 2012, p.43). This reveals the presence of underage, double and multiple registrations. However, INEC reported to have cleared 870,612 multiple registrants before the elections (INEC, 2011; EU EOM, 2011; NDI, 2011). This is a welcome development towards better elections. Probably, and as The Commission argued, most of the problems with the absence of voters’ names on the register used during the 22<sup>nd</sup> of November 2013 Anambra governorship elections are related to the commission’s efforts to clean the national voter register.<sup>48</sup>

The Commission was also open and transparent during the elections. It allowed for both partisan and non-partisan observation, ensuring that political actors - voters, parties, candidates and observers - all had access to the register before the elections. This is to enable each to check and raise objections or request corrections regarding entries. For example, the voter register was displayed and made available to all stakeholders.<sup>49</sup> Almost all (63%) display centres were made operational (PSC 2011).

Figure 5.5 is a picture of voters checking their particulars on a display in a centre. This is contrary to 2007 when political parties had to seek court intervention before they could get copies and non-partisan observers had to rely on parties to access the register.

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<sup>48</sup> See “*Anambra Election: Our Story*” address by the INEC Chair at a Press Conference on the 22<sup>nd</sup> of November 2013.

<sup>49</sup> The display was in position between the 14<sup>th</sup> and 19<sup>th</sup> February 2011.



*Figure 5.5 Voters Register Display*



*Source:* NDI 2011, p.27.

*b) Fair Candidate Nomination*

The 1999 Constitution (as amended) requires a person standing in an election to be a Nigerian citizen or a Nigerian citizen by birth if standing for presidency or governorship. If standing for the National or State House of Assembly or a Governor or Deputy Governor, a person has to be 30 years old and 40 years old for President or Vice President. Also, a candidate has to have a minimum of a school certificate or the equivalent for all other posts except governorship and president for which a tertiary certificate is required. This is in addition to being a member of and being sponsored by a political party. He should not be a lunatic, of unsound mind, under a death sentence, imprisoned, or have been fined for an offence involving dishonesty or fraud, bankrupt, hold any public office, be a member of a secret society or have presented to INEC a forged certificate or have been elected to the office of governor or president in any two previous elections. Also, the law provides for political parties to conduct primaries and nominate candidates either by a direct or indirect process and shall communicate the result to INEC.<sup>50</sup> A primary election is direct when

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<sup>50</sup> Electoral Act 2010, section 87 (1) (as amended).

each party member convenes in one location to vote for an aspirant, with each member casting one vote and it is indirect when a political party has nominated its presidential aspirant through a special convention in each of the 36 states of the federation and the Federal Capital Territory (FCT) after which each candidate with the highest number of votes is ratified at a national convection (INEC, 2011). INEC is mandated to monitor the entire process and keep records of these activities.<sup>51</sup> In this regard, all the registered political parties in the country used the indirect method to select their candidates for various elective positions except the CPC which nominates its candidates using the direct method.<sup>52</sup>

Accordingly, allegations of corruption dominated the primaries and confused the electoral process. Political parties became polarised and each faction mobilised against the other, setting up different offices and fielding different candidates for the same post (NDI, 2011, p.29). For example, a delegate during the PDP convention was reported to have said the:

... PDP auction was over...with each PDP National Delegate given the Egunje [(bribe)] of \$7,000 USD from Aspirant Goodluck and \$5,000 USD from Aspirant Atiku. So, we [were] smiling ... to vote [for] the highest bidder Goodluck. .... We have sold our VOTES (Sahara Reporters, 2011).

Consequently, many ascribed the political tussle within the ruling PDP between the '*Tsohuwar-PDP*' (Old PDP) and the '*Sabuwar-PDP*' (New PDP) to have originated from the use of indirect nomination and the absence of internal party democracy (The Punch, 2013). However, it could be argued that the development of factions within parties is an effect of other factors, as even the CPC which used the direct method is entwined in this problem, particularly in Kano, Katsina and

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<sup>51</sup> As provided by sections 85(1) and 85(2) of the Electoral Act 2010 (as amended).

<sup>52</sup> See Appendix A6.

Nasarawa states. While this argument is valid, the problem within CPC is that the factions already existed even before the primaries. In Katsina state, for instance, the primaries were conducted on two different occasions. The Masari-led<sup>53</sup> faction had theirs and so did the Danmarke<sup>54</sup> group and apparently neither the party nor the courts were able to handle the problem as up until the end of my fieldwork the case had not been settled.<sup>55</sup>

This development confused The Commission and electors. Because The Commission received 2-3 contradictory court orders regarding party primaries, INEC found it difficult to decide who among the contesting aspirants should be on the list of candidates for different posts and the ballot papers. A key official of The Commission explains that court orders kept coming to the extent that INEC had to seek the intervention of the Chief Justice of the Federation on court injunctions.<sup>56</sup> As an interim measure, INEC decided to put the party logo on the ballot paper, thus making it difficult for voters to actually know the person they have voted for. A good example is the case of 10 national legislators, all from Katsina state, as the courts were able to settle their case before the end of my fieldwork.<sup>57</sup> In short, while the problems of internal party democracy remain unresolved, the 2011 candidate selection was more peaceful and transparent compared to that in 2007. In particular this was because INEC refused to get involved in the selection process beyond its constitutional mandate of supervising the primaries. Also, the 2011 elections recorded fewer cases of violence and candidate assassination, as we have seen in the case of the 2007 election.

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<sup>53</sup> Aminu Bello Masari was the former Speaker of the House of Representatives.

<sup>54</sup> Garba Yakubu Lado Danmarke was a member of the House of Representatives.

<sup>55</sup> Interview note on the 1<sup>st</sup> of December 2012. I made a follow up telephone call on 19/10/13.

<sup>56</sup> Interview note, 1<sup>st</sup> December 2012.

<sup>57</sup> I made a follow up telephone call to the Personal Assistant of the affected members on 19/10/13.

c) *Electoral Campaign and Media Coverage*

The 2010 Electoral Act (as amended) stipulates that campaigns are to commence 90 days before elections. It requires that political parties and candidates be given equal access to public places, rallies and processions and that the media do not operate to the advantage or disadvantage of any political party or candidate.<sup>58</sup> Also, to regulate the campaigns and ensure peaceful electioneering, the Act prohibits the use of abusive, slanderous, unrestrained language which could incite violence. In line with these provisions, the 2011 election campaign could be said to be relatively violence free. Also, most of the major political parties and candidates had some sort of political agenda which they supported. Issues such as security, corruption, economy, health, education and other infrastructures dominated the campaign (NDI, 2011, p.36). In a televised presidential debate hosted by the NN24, an affiliate of CNN established in May 2010, contestants such as Buhari said: ‘We in CPC have decided that the important issue to discuss and address by our administration is firstly the security situation of the nation itself’. Ribadu discussed how his party seeks to address the Niger-Delta developmental problems and Shekarau explained his plan to harmonise diversity for development.<sup>59</sup> Yet, the campaign trail left numerous gaps for personality and patronage politics to triumph<sup>60</sup> over tolerance as ‘... the emergence of Ribadu as the flag bearer of ACN was [the] handiwork of Tinubu’<sup>61</sup> and within CPC Buhari appeared the only undefeatable presidential candidate. Indeed, there were allegations from others that most politicians within the CPC were

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<sup>58</sup> Sections 94–101 of Electoral Act 2010 (as amended).

<sup>59</sup> For details on the debate follow this link [Nigerian 2011 Presidential Debate](#).

<sup>60</sup> By personality I mean the distinctive and noticeable characteristics that make somebody politically appealing compared to others and patronage politics refers to the influential power to grant privileges or appoint someone to a position.

<sup>61</sup> Interview with TMG staff, 23<sup>rd</sup> August 2012.

actually using Buhari's credibility to meet their political ends as they are not fit to compete on a one-to-one basis.<sup>62</sup>

Also, the campaign witnessed its own version of the abuse of state powers and incumbency. For example, opposition parties complained about the failure of the ruling party to set a boundary between official duties and campaign activities. It is argued that instead of benefiting from incumbency, the politicians '... abuse their powers ... to basically engage in massive electoral fraud [and] falsify the system. The abuse of incumbency is the trouble with effective electoral systems in Nigeria.'<sup>63</sup> This is true to an extent as there were several cases of violations of the opposition's rights and freedoms. For example, the ANPP, ACN and CPC presidential candidates were each forbidden to launch their campaigns in various states on the grounds of the breakdown of law and order (NDI, 2011, EU EOM, 2011).<sup>64</sup>

Also, the media coverage of the campaign does not appear to be helpful either. It is very discriminatory, with bias in favour of the ruling party. For instance, the NTA refused to air an advert by the opposition CPC, claiming that it contained messages that are offensive to the government (EU EOM, 2011, p.43). The station, according to European observers, appeared to be discriminatory to other political parties and contestants.

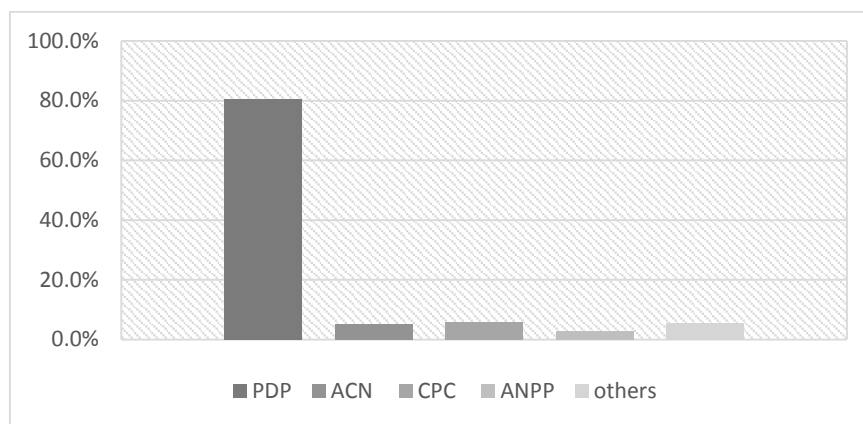
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<sup>62</sup> A follow up telephone call with CPC members who indicated that some politicians are using Buhari's integrity as means for canvassing for vote. He told me: 'notice the size of Buhari's picture on the posters and the contestant picture.

<sup>63</sup> Interview with a CDD official, 13<sup>th</sup> November 2012.

<sup>64</sup> The ANPP presidential candidate was forbidden to launch his bid in Ebonyi, as in doing so the state government argued it would break law and order. In Benue, ACN alleged that, for no reason, the state government forced it to flag up its presidential campaign in Gboko LGA instead of the state capital where it has more supporters and can attract more votes. Similarly, the police refused to approve the flagging up of the CPC presidential campaign in Niger state, pointing out that it coincided with a PDP senatorial campaign launch (NDI, 2011, EU EOM, 2011).

*Figure 5.6 Campaign Time Allocation for Political Actors (Without Paid Advertisement) in NTA*



*Source:* EU EOM, 2011. (Calculated based on a total of 31 hours and 38 minutes of coverage)<sup>65</sup>

Figure 5.6 presents the coverage of the activities of candidates and their parties by the NTA during the 2011 elections. The horizontal or x axis lists the most prominent political parties in the elections and the vertical or y axis represents the percentage of time given to each candidate and his party between 17.30 and 23.30 from the 11<sup>th</sup> of March to the 27<sup>th</sup> of April excluding paid advertisements. The figure shows that the station failed to balance coverage among contending political parties. In fact, 80% of the coverage was allocated to the PDP, and 5% to ACN and CPC each. The remaining 18 political parties that stood in the presidential elections combined were rarely (8.3%) considered in the campaign coverage. In addition, Jonathan received 81% of the total coverage of the NTA prime time and 75% of direct speech in the NTA's news. Buhari, Ribadu and Shekarau were each able to secure less than 10% (EU EOM, 2012, p.33).

The possible explanation is that the legal framework setting these bodies failed to detach them from executive influence and subsequent governments and top ranking officials still managed them

<sup>65</sup> For details about these and many more see EU EOM, 2011 Annex B: Media monitoring findings (2011, pp.59-77).

with the colonial and military mentality of '*obey the last order*'. If one is to imagine a situation where any of these stations (NTA or FRCN) is to gamble by giving other parties or contestants more coverage, we can discern two probabilities. One is the closure of the station. This is exactly what happened in Zamfara state when the Editor-in-Chief of Pride FM hosted an opposition during one of the station's political talk/vote mobilisation programmes. The station was shut down on the 15<sup>th</sup> of April 2011 for alleged technical failures (EU EOM, 2011). Two is the Editor-in-Chief or head of the station might be fired, as also happened in Zamfara. This confirms the view that incumbents can limit the rules governing media to control the potential of the opposition (Gandhi & Lust-Okar, 2009).

In short, the above is beyond the scope of the privileges of an incumbent. It is true that incumbents have more advantages of getting reported but equal representation requires each contestant to be given reasonable liberty to campaign and rally popular support. However, while the campaign atmosphere in 2011 in terms of media coverage appears skewed, it demonstrates some level of openness as candidates campaigned actively, employing different strategies to reach the electorates. The presence of all the key contestants in the above-mentioned TV presidential debates clearly supports this position. Also, contestants used social media to reach the electorate. For example, President Goodluck announced his presidential bid on Facebook and many used motorcades, billboards, posters and excerpts from local and modern musicals. Similarly, the campaign trail provided the required political settings for candidates to campaign, expressing their policy options and persuading the electorate.

#### *d) Voting Process*

The voting process in the 2011 elections was judged to be well organised by domestic and foreign observers, the electoral commission and many other electoral stakeholders (PSC, 2011; EU EOM, 2011; INEC, 2011; NDI, 2011). The REMOBS discussed in Chapter Four is a new voting process with two stages of accreditation and voting stipulated in the electoral guidelines which was made available to all political parties and observers and as well as explained to voters in the commission's voter education campaigns. The accreditation starts with each prospective voter presenting himself at the polling unit and the presiding officer, assisted by the polling clerk, orderly confirming whether the voter is duly registered at the centre by checking him personally, his voter's card, and looking for the same information on the register.<sup>66</sup>

This new system is believed to provide Nigerians with the '... opportunity to exercise their voting rights and to ensure their votes count' (PSC, 18 May 2011, p.1). The process is described as breaking away from the old tradition of poor elections and the voting was conducted in a calm and peaceful atmosphere (NDI, 2011, p.51). Polling stations were opened for accreditation as early as was reasonable (PSC, 2011; EU EOM, 2011).<sup>67</sup> While there were complaints about whether the REMOBS<sup>68</sup> accreditation was thorough, voters' names were checked and their fingers marked with inedible ink (EU EOM, 2011, p.46). Similarly, the voting is described as good, as the majority of the polling units covered (90%) in the country by observers were reported to have started voting

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<sup>66</sup> See for instance Chapter Four for details about REMOBS (INEC, 2011, Guideline for Polling Officials).

<sup>67</sup> During the legislative elections, more than half (58%) of the polling units were operational by 9am and almost all (96%) by noon. Also, on the day of the presidential elections almost all (76%) had opened by 9:00am (PSC, 2011). Confirming this pattern, EU observers indicated that 91% of the polling units were functional during the legislative elections.

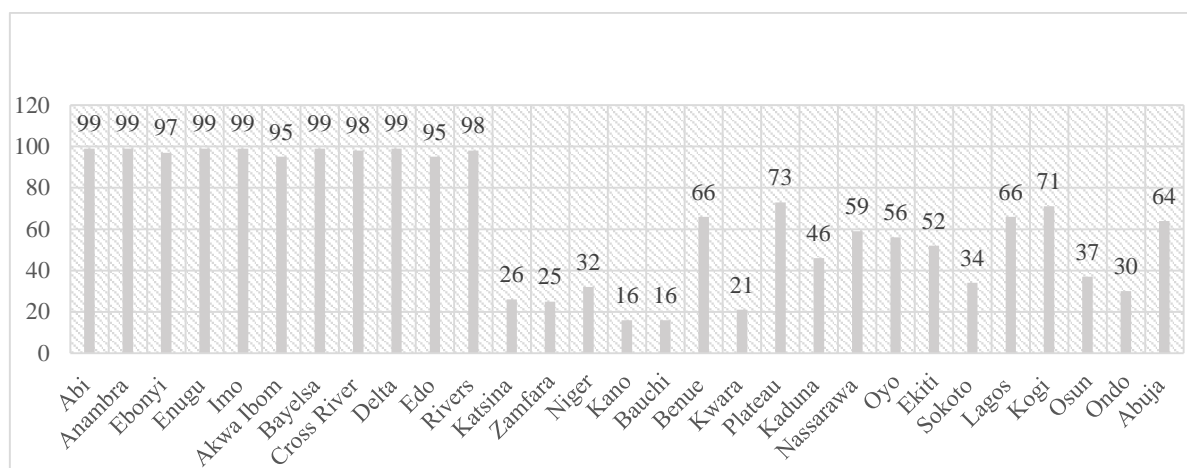
<sup>68</sup> Interview with an official of CEDDERT, 16<sup>th</sup> November 2012.



as early as 14:00 (EU EOM, 2011). A possible explanation for this, as reported, is that with the adequate logistic arrangement, it is easy for electoral materials to reach all parts of the country (PSC, 2011; RERC, 2012; EU EOM, 2011; NDI, 2011). However, there were reported cases of underage voting (12% in the legislative and presidential elections and 17% in governorship elections) and attempts to influence voters by party agents in 8%, 17% and 21% of the polling units (EU EOM, 2011, pp.46-48).

Another significant dimension of the voting process in 2011 is the pattern of distribution of voter turnout. The 2011 election seems to have produced an interesting voter turnout. Figure 5.7 indicates that while all the northern states are ethnically dominated by the Muslim Hausa-Fulani population, the PDP with a ‘Christian/Muslim ticket’ scored in all states more than the required 25% of the total votes cast, except in Kano, Bauchi and Kwara. Also, the party broke the dominant tradition of ethnic voting in the Yoruba-dominated South Western states.

*Figure 5.7 Percentage of Support for the PDP Presidential Candidate, 2011*



*Source:* Official Election Result

In fact, in Lagos, the PDP won with 65.90% of the total votes cast. This supports the growing literature that states ethnicity is losing its grip as an explanatory variable in African politics to other more pertinent factors like private interests and institutional arrangements (Elischer, 2008; Elischer, 2013).

Another interpretation of the 2011 presidential election voter turnout is that it indicates a clear case of electoral rigging perpetuated in the South South and South Eastern regions of the country. According to the above figure, the elections produced an exceptional result that differed from almost all elections conducted in Nigerian electoral history. The figure shows an overwhelming majority of almost a 100% turnout in all the states from these zones and in favour of the ruling PDP. In fact, only 1% of the total registered voters were absent during the elections, or more precisely only 5,918 out of 591,870 registered voters went without voting in Bayelsa state. This could be because some respondents believe the ruling party waited and got a fair idea of

... how many millions to do it, to add to the votes, and they declare it. That is what is equal to the eleven states: 5 in the South East and 6 in the South South. What happened is, the average turnout, and you can quote me on this, I have the numbers, is almost double the national average. The national average is about 38–39%; they were doing 67–70%. In Imo, that is the voting; when they do an average turnout, they now do 99% of votes for one candidate that is impossible.<sup>69</sup>

Another one added that had the PDP not cheated there would have been a runoff election, where the party stands to win more than any other party.<sup>70</sup> Others are of the view that the elections were rigged and that is what incited the violence experienced after the presidential elections. The people, argued a respondent, felt that their choice was not respected<sup>71</sup> because they were disappointed with

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<sup>69</sup> Interview with a politician, 31<sup>st</sup> August 2012.

<sup>70</sup> Interview with a former minister, 31<sup>st</sup> August 2012.

<sup>71</sup> Interview with an official of CEDDERT, 16<sup>th</sup> November 2012.

the results declared<sup>72</sup> and they took to the streets. The government is complaining of ‘... the violence that the north faced. I feel for those guys who went on a rampage. It is a pity that lives and properties have to be lost in the process, but they have a genuine heart to grudge. It obvious, they didn’t have the computer that I have, they didn’t have the laptop to view the printable results, but they sensed it. They knew something was wrong intuitively.’<sup>73</sup> Jega explains this is a ‘crisis of expectations’ which he believed to be the immediate cause for the post-election violence.<sup>74</sup>

#### *e) Vote Counting and Announcement*

The counting and result announcement in the 2011 election is well managed compared to in the 2007 election. Here counting began with the ballot box being brought out from the polling booth, opened and emptied on to a table. The name of each political party that is marked on each ballot paper is read aloud and the ballot shown to each party agent and monitor. Tally sheets are kept by each party agent and monitor, as well as the presiding officer or polling clerk. The spoiled/invalid ballot papers are placed to one side to be counted at the end and entered on to the tally sheet. The total is calculated and placed on the official result sheet provided.<sup>75</sup> The form is then signed by the presiding officer and party agents. The refusal of an agent to sign the result, however, does not invalidate the results. Copies are then distributed to the party agents and the security personnel present. The police provide security to the polling officials to transport the results to the next collation centre. At the ward collation centre, the results conveyed from various polling units are tabulated by the Returning Officer for onward submission to higher collation centres at the local

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<sup>72</sup> Interview with a politician, 31<sup>st</sup> August 2012.

<sup>73</sup> Interview with a politician, 31<sup>st</sup> August 2012

<sup>74</sup> Interview with the INEC Chairperson, 13<sup>th</sup> September 2012.

<sup>75</sup> See supra note 34 in this chapter.

government/constituency, state and national levels depending on the election in question (INEC, 2011, Guideline for Polling Officials).

The process is transparent and inclusive as partisan and non-partisan observers were allowed at all levels. The electorate were also given the chance to monitor the process from a distance. In the beginning the government wanted to limit this, but INEC said people ‘can stay back’ and protect their votes.<sup>76</sup> So, counting commenced immediately after all accredited voters in the queue had voted. It is reported that the majority of the polling units closed for counting around 16:00–16:30 (NDI, 2011; EU EOM, 2011) nationwide. However, the counting did not always comply with the set criteria. Polling officials were seen at collation centres reconciling the spoiled and unused ballots and transferring the recorded election results from plain sheets to the provided result sheets (NDI, 2011; EU EOM, 2011). This might have accounted for the failure to post results in 20% of the polling stations during the legislative elections (PSC, 2011). However, if we look at this from the opposite direction, we can say that results were posted in 80% of the stations observed by PSC.

Yet, evidence indicates that ad hoc officials appeared to have enjoyed undue discretion. For instance, during the legislative and presidential elections they refused to use the provided tamper-proof envelope package. These are envelopes provided by INEC to protect the sanctity of the results from polling stations while travelling to the next collation centre. Instead of complying with this arrangement, only a relative percentage (44%) of the polling officials used the envelopes (EU EOM, 2011). Also, there were reports of arithmetic errors as results had to be modified either at ward, local government, constituency or state level. For example, during the legislative

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<sup>76</sup> (Leadership Newspaper, April 9<sup>th</sup>, 2011)

elections, it was found that 70% of the polling results had cases of computation errors at ward level and 80% at local government level (EU EOM, 2011, p.47). In fact, in Katsina state a field officer shared with the researcher the following text message:

ACN actual votes 10,839 but INEC declared 7,885, ANPP actual votes 6,342, while INEC declared only 4,388, CPC actual votes 1, 193, 919 but 864,343 were declared, PDP actual votes were 415,508 but only 282,477 were declared by INEC. Therefore, there is error in the presentation of the results.<sup>77</sup>

To validate this information he provided a copy of the INEC computed results for the state.<sup>78</sup> The sheet was tattered, but carried the same information. However, the result was later corrected after monitors, party agents and commentators raised an alarm about the discrepancies.<sup>79</sup> In short, while these errors pervaded the elections, especially during the presidential elections, the collation process was rated positively as the results declared were confirmed as consistent with what transpired in the field (PSC, 2011, pp.6-8). In fact, the collation process was rated at 80% during the presidential elections by the EU observation team.

### 5.3 *Conclusion*

The two pictures painted above indicate that a democratic election requires a functional electoral cycle for it to guarantee effective competition, participation and to build concrete feelings of legitimacy. The attainment of these values necessitates the need for each of the phases involved to be free from irregularities. This chapter indicates that errors perpetuated at different stages of the electoral process were part of the major obstacles for credible elections in Nigeria. Looking at the different perspectives, the chapter finds that the administration of the electoral game has an impact

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<sup>77</sup> A sample of a text message shared by a field assistant, 17<sup>th</sup> April 2011 @ 16:35:46 GMT.

<sup>78</sup> Appendix A3.

<sup>79</sup> A follow up telephone call with the INEC PRO in the state during the election on 25/09/2013.

on the integrity of elections in many ways, as expected by the literature. Technically prepared and efficiently handled electoral processes provide a chance for successful elections. Such established electoral cycles, however, do not guarantee democratic quality unless they prevent and minimise inside and outside pressures from affecting the level of electoral competition and participation (Diamond, 1999; 2002; 2008; Diamond & Morlino, 2005; Schedler, 2006; 2002; Bratton, 2013). Small failures in achieving optimal participation, for example, do not devalue the quality of an election. For example, the short recorded variance in terms of participation during the 2011 election is actually commendable, considering the trajectories of bad electoral practice in the country and can be explained by the level of preparedness and effectiveness of the electoral processes. This complements the argument that it is at the level of rule application that electoral governance is more prone to errors and for elections to be credible, there has to be effective coordination and organisational planning (Mozaffar & Schedler, 2002, p.9; Elklit & Reynolds, 2002; 2005; Schedler, 2002).

Similarly, the suspicions and poor quality of participation in the 2007 election cannot be separate from the overall organisational and implementation failures associated with the elections, indicating that the merit of an election is dependent in part on the administrative efficiency of the electoral cycle. Thus, this confirms the view of some scholars that the credibility of elections is indispensable to effective electoral cycles (Mozaffar & Schedler, 2002; Schedler, 2002; Elklit & Reynolds, 2005 & 2002) and assessing the quality of elections requires looking at the entire processes involved in the administration of elections (Diamond, 2002; Bogaards, 2007). In fact, the absence of a reliable result for the presidential elections and the complete absence of a comprehensive legislative election result made it difficult to make a positive conclusion about the

electoral quality of the 2007 election. Also, we have seen how the majority of Nigerians perceived the 2007 election as fraudulent and the 2011 election as free and fair.<sup>80</sup>

Also, the chapter indicates, as expected by the growing literature on electoral authoritarianism, that there are various ways and stages at which the actual violations of the basic democratic requirements of participation, lack of competition and perceived legitimacy can take place. For example, it can happen at the point of voter registration when the process is deliberately mishandled to pave the way for the inclusion of multiple, phantom, fake and minor voters which can perpetuate proxy voting and election rigging. This has been one of the major features of many elections in transitional regimes which is one among the many ways employed by incumbents to hold on to power and block any possible alternation (Calingaert, 2006; Dorman, 2006; Darhoff, 2011; Vickery & Shein, 2012; Bratton, 2013; Ibeanu, 2009; Ikpe, 2013; Smah, 2008; Fabrice, 2003; Lopez-Pintor, 2010). Similarly, it shows how sub-standard candidate nominations or biased media campaigns could skew the electoral terrain in favour of the incumbent, providing an empirical explanation to the argument that the incumbent's control of the media could limit the circulation of information among opposition elites and thereby limit the entry of formidable opposition (Gandhi & Lust-Okar, 2009). Thus, reducing the level of electoral competition.

Having established the role of electoral cycles, however, the significance of “godfather” politics and clientele politics cannot be underplayed. The preponderance of the practice of “godfather” politics across the country indicates the relevance of these factors in understanding electoral politics. However, clientele politics triumphed where institutional measures failed to protect a

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<sup>80</sup> See Chapter Three's discussion on the perceived legitimacy of the 2007 and 2011 elections.

political system from the political narrow-mindedness of elites. Indeed, political behaviour and political calculations are institutionally bonded and institutions influence socio-political behaviours (Rhode, 1995; March and Olsen, 1989; Ostrom, 1999; and Fox and Miller, 1995). Thus, credible elections, while dependent on ethnic affiliation and individual partisanship, are indispensable for efficient electoral institutions in Nigeria.

In short, this chapter reinforces the arguments that shortcomings, even in one step of the sequence or link in the chain of the electoral cycle can undermine the democratic quality of an election (Norris, 2013; Norris, Frank, & Coma, 2013) and the quality of electoral process matters for democratic voting (Levitsky & Way, 2010; Schedler, 2002; Greenberg & Mattes, 2013). Evidence indicates that there appears to be a consensus that the 2007 election suffered several attempts to manipulate its outcome, including the disenfranchisement of eligible voters. Procedurally, the voter list seems incomplete and several candidates for key offices were allegedly discouraged, perhaps to pave the way for anointed candidates. On the other hand, the 2011 electoral process is believed to have provided Nigerian citizenry with an opportunity to exercise their franchise as the polls were conducted in a generally calm and peaceful atmosphere, with an electoral commission that made significant preparations to meet all possible logistic challenges. Moreover, the chapter finds a connection between election observers' assessment and public perceptions of election quality, even though observers do approach elections with a 'pre-election stance' (Kelly, 2010) and '... the process of observing [is] as political as the election itself' (Dorman, 2006, p. 172 ). This is visible in the way Nigerians rate the 2011 election as better than the 2007 election.<sup>81</sup>

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<sup>81</sup> See Figure 3.2 Chapter Three.



However, electoral outcomes are usually challenged by aggrieved parties, thus assessing the quality requires looking at how disputes are resolved. This is the task of the next chapter.

## *Chapter 6 Electoral Dispute Resolution: ‘The Privilege of the Underprivileged’<sup>1</sup>*

Allegations of irregularities, manipulations and errors are typical of Nigerian elections. Over two thousand petitions were filed against executive and legislative returns in the 2007 and 2011 elections alone (INEC, 2007 & 2011). This raises questions about how ‘people of the bench’ resolve disputes over electoral outcomes and what impact this has on the quality of elections in the country. This chapter takes on this concern and argues that while the democratic quality of elections depends on the autonomy of the electoral commission and the effective execution of electoral cycles, impartial and expedited resolution of electoral disputes is equally indispensable. It highlights the significance of the timeliness of proceedings, the openness and impartiality of arbiters and burden and standards of evidence in studying electoral resolution in Nigeria<sup>2</sup> as against the seven essentials provided in the recent interest on election integrity.<sup>3</sup>

This chapter focuses on these three and demonstrates that electoral adjudication in Nigeria has reinforced the quality of electoral contest by reinstating the right of people to decide who shall govern them. Previously, elections subject to significant non-compliance with electoral laws were either nullified by the electoral courts and tribunals or ordered to be re-run. Secondly, the courts have ensured that unconstitutional exclusions in the polls, especially in 2007 were reversed. Lastly, the chapter confirms arguments made elsewhere in the literature that there is a reciprocal relationship between an independent and proactive judiciary and peoples’ right to participation

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<sup>1</sup>This title is coined from the Hausa proverb: ‘*Gatan mara gata*’ which literally means the ‘privilege of the underprivileged’.

<sup>2</sup> (Haruna, 2008; ERC, 2008; FGN, 1991; Okoye, 2009; Ojo, 2011).

<sup>3</sup> See the IFES publication on (Vickery, 2011).

(Mozaffar & Schedler, 2002; Vickery, 2011; Eisenstadt, 2002). Like the preceding chapters, this chapter compares the different views about the electoral dispute resolution mechanisms in the 2007 and 2011 elections respectively.

### *6.1 Electoral dispute mechanisms: 2007 elections*

The 2007 legal electoral regime provided for the establishment of an Election Petition Tribunal (EPT)<sup>4</sup> to hear and resolve all electoral disputes. The courts constituted by the President of the Court of Appeal (CoA) in all the 36 states of the federation, had the original jurisdiction to determine the election or otherwise of a person as a member of national or state legislative assembly and is a Governor or Deputy Governor of a state.<sup>5</sup> Appeals arising from the decisions of EPT terminate at the CoA, while those of presidential elections which originate from the Presidential Election Petition Tribunal (PEPT)<sup>6</sup> terminate at the Supreme Court.<sup>7</sup> Also, a relevant provision of the Electoral Act 2006 empowered any High Court – state or federal – to resolve all pre-election complaints.<sup>8</sup> The Act further stipulated that only a candidate in an election or a political party who participated in an election has the legal standing to challenge an election.<sup>9</sup> Finally, the Act specified the necessary procedures involved in the filing and presentation of all election petitions.<sup>10</sup>

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<sup>4</sup> Section 285 (1) (2).

<sup>5</sup> The 1999 Constitution, section 285 (1) (2).

<sup>6</sup> This court is equivalent to the CoA by law.

<sup>7</sup> Sections 233, 239 and 246 of the 1999 Constitution.

<sup>8</sup> Section 32 (4) of the 2006 Electoral Act.

<sup>9</sup> Sections 144 (1) and 145 (1) of the 2006 Electoral Act.

<sup>10</sup> The 2006 Electoral Act.

This provides for courts to adjudicate conflicts that may arise among contestants in pre- and post-election periods. During the pre-election period, the Federal and State High Courts were reported to have dealt with several petitions regarding political party primaries and other related appeals. The *AC vs. INEC* legal battle discussed in Chapter Four over the latter's power to disqualify a candidate submitted by the former, indicates this and showcases the existence of the right to redress and its awareness among contestants. In fact, despite losing at the lower courts, the party and the candidate kept appealing to the Supreme Court which ruled that non-interference with the internal affairs of political parties no longer holds and INEC does not have any power to disqualify candidates.<sup>11</sup> Similarly, after the elections, complaints were handled by tribunals first and later by CoA and the Supreme Court. However, how efficiently and effectively the process managed these complaints depends on other factors such as promptness.

*a) Timeliness of Proceedings*

Before the 2007 election tribunals and courts were seen by academics and practitioners as institutions where people with questionable mandates hung on to political power (Okoye, 2009, p.138; *cf.* UNODC 2003; 2004; Abdurazaq, 2005; Unobe, 1999). The courts were believed to be inactive in deciding people's right to participate in governance either by systematic delay or complete dismissal of valid petitions as 'miniature complaints' (Haruna, 2008, p.48). Among the most recently cited cases are *Buhari vs. Obasanjo 2003* and *Chris Ngige vs. Peter Obi, 2006* the verdicts of which lasted two to three years in a mandate of four years. However, the adjudication demonstrates considerable improvement both in terms of quantity and quality.

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<sup>11</sup> (*AC vs. INEC (2006)*, 6.n.w.l.r, (part 1029) 142 at 162).

*Table 6.1 Speed of Election Petition Management as at April 2008*

	Disposed Petition	Pending Petition	Total
Tribunal	1,185	88	1,273 <sup>12</sup>
CoA	-	277	-

*Source:* Author's Compilation

Quantitatively, Table 6.1 indicates that by late April 2008, the majority (93.08%) of the 1185 petitions filed across the country had been disposed of by the tribunals. In fact, around the same time, the tribunals had finished their assignment in 29 states (LDC, 2009, p.65). Also, the Table shows that 277, which is equivalent to 23.37% of the disposed petitions were at the appeal stage. Confirming this trend, the NDI indicated that as at the end of April 2008 tribunals had diligently heard and annulled 9 governorship and 21 legislative elections (NDI, 2007, p.40). This is a landmark development, as before Nigeria had a petition that took 25 years to be heard and resolved (ERC, 2008, p.104). Thus, having 93% of petitions resolved by tribunals within a year is a welcome development.

Evidence indicates these developments seem to be associated with the reforms of the electoral resolution mechanism. Among such changes is the requirement that petitions and appeals arising from electoral disputes must be given an accelerated hearing and precedence over all other complaints. Also, a timeframe is set for the filing of complaints<sup>13</sup> and a new guideline for courts and court users was introduced. The guideline recommends the frontloading of petitions. This is a way of providing in advance a list of petitioners and respondents' witnesses, their sworn

<sup>12</sup> 8 of these petitions are against Presidential, 108 Governorship, 133 Senatorial, 301 members of House of Representatives, and 722 state houses of assembly elections.

<sup>13</sup> A petition according the Electoral Act shall be filed within 30 days after result announcement (Act, 2006, 141).

depositions and copies of the reference documents. The process further introduced a pre-hearing at the interlocutory stage and counsels have to agree on the number of witnesses to use, exchange a brief of the arguments and later cross-examine witnesses orally. The effort was welcomed and described as laudable (LDC, 2009, p.58) because it simplified electoral litigations (EU EOM, 2007, p.30), although, it was questioned on the grounds that it exposes witnesses to danger as their names and sworn depositions are made public for desperate politicians who might seek to compromise them (NDI, 2007, p.39). On these grounds, the President of the CoA (PCA) reviewed the guidelines and names were later anonymised (i.e. using Mr 'A' to refer to a witness).

Qualitatively, the tribunals refused to entertain unnecessary delay in the discharge of their duties. On several occasions in different places, tribunals reminded counsels that they could no longer entertain distractions (LDC, 2009; EU EOM, 2007, p.31; NDI, 2007, p.40). Some responded with short notices to request extensions by counsels. For example, the tribunal sitting in Lagos gave a one day extension in its response to the motion for an extension filed by INEC's counsel (NDI, 2007). Another in Abia clarified that '... the days of long adjournments are over ... [as] people anxiously want to know what happened to those they elected into office' (LDC, 2009, p.78). This indicates the commitment of tribunals to protecting peoples' rights within the shortest possible time. Indeed, tribunals reiterated that they were '... not prepared to sit until eternity' before cases could be resolved (The Guardian, 2007).

While time is not the primary concern of electoral resolution, elections are time constrained. It might be safe to argue that unless a delay is necessary, judges are expected to speed up their duty so that people with questionable mandates do not remain in power. However, the efficiency of

courts is not just limited to time as other factors are also relevant. For example, a respondent reveals that judges presiding over electoral litigations face various types of threat which include the use of religion, cultural and family bonds, material fortunes and violent intimidation towards them and their families.<sup>14</sup> Therefore, while keeping to time is essential to justice, the independence and neutrality of the arbitration is equally important.

*b) Impartial and Informed Arbiter*

The fairness of judges on electoral matters remains a subject of debate among Nigerians. A former National Secretary to INEC wrote ‘... electoral disputes often compromise the judiciary’<sup>15</sup> and the organ has been blamed for corrupt practices (Unobe, 1990). In fact, an investigation into the affairs of the judiciary by the National Judicial Council (NJC)<sup>16</sup> recommended the dismissal and compulsory retirement of two judges in 2004 (FGN, 2003 & 2004).<sup>17</sup> However, from 2003 and beyond, some academicians argued that the reforms of the judiciary have recorded noticeable improvements and the independence of the judiciary (Suberu, 2008; Okoye, 2009). For example, the appointment and conditions of service of the judiciary are now managed by the NJC and Federal Judicial Service Commission and this has removed the judiciary from executive influence.

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<sup>14</sup> Interview with a Tribunal Judge, 11<sup>th</sup> January 2013.

<sup>15</sup> Interview with a former National Secretary 1<sup>st</sup> November 2012 who referred me to several papers in his blog.

<sup>16</sup> Details about members of the NJC can be found in section 20 of the Third Schedule, Part I of the Third Schedule to the 1999 Constitution.

<sup>17</sup> It is reported that ‘... against the backdrop of the 2003 general elections, two justices of the Court of Appeal, Justice Okwuchukwu Opene and Justice David Adedoyin Adeniji were dismissed by NJC for receiving bribes of N15m and N12m respectively. This was in respect of the appeal filed by Dr. Ugochukwu Uba against the Anambra South Senatorial Election Tribunal which confirmed Prince Nicholas Ukachukwu as the winner of Anambra South Senatorial District election of 2003 (Leadership News Paper, May 29<sup>th</sup>, 2014) available online:

<http://leadership.ng/news/372550/confabs-mixed-message-judiciary-reform>.

On elections in particular, the appointment of judges to serve in the resolution of electoral disputes is independent of the executive. For instance, in the 2007 elections the PCA nominated from among the existing members of the CoA after consulting local branches of the Nigerian Bar Association (NBA) on the appropriateness of nominees. Therefore, it is argued that ‘... the Nigerian judiciary has got the independence required in a democracy ... and there was no interference in the appointment of the judges and the discharge of their responsibilities’.<sup>18</sup> This corroborates the view that in the 2007 election the integrity and independence of the judiciary in the country increased considerably (Suberu, 2008; Enweremadu, 2010; Ojo, 2010).

In terms of experience, the judges who presided over the election petition are believed by domestic observers to be well-informed. Each has to attain the rank of magistrate or chief magistrate to qualify for appointment. Also, they were appointed well ahead of time and training workshops were organised for them before their deployment (LDC, 2009, p.48). In one of the training sessions, the judges were reminded of their responsibilities and international best practices in handling electoral litigation (Vickery, 2011, p.52). This has improved their performance capacity and quality of their judgements. For example, when the CoA nullified the governorship election of Ekiti state, the governor instantly accepted the decision and said: ‘the verdict is not a setback. I do not see the re-run as a setback because, if we do it again, we will still win’.<sup>19</sup> A commentator and media practitioner described the role played by the judges as the ‘... triumph of the majority over the oppression of the minority’ (Guardian, 2009), indicating some level of impartiality in the management of electoral complaints (ERC, 2008; EU EOM, 2007, p.31). Thus, for some the

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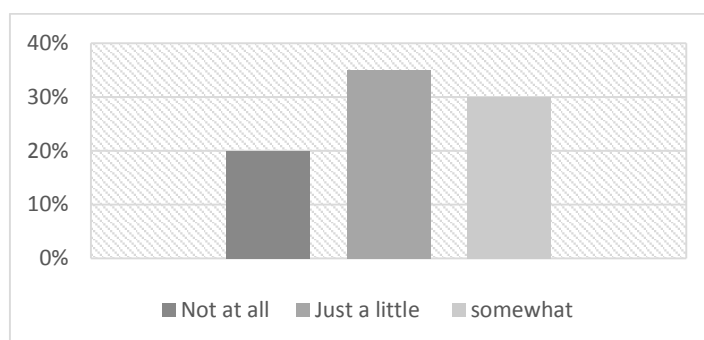
<sup>18</sup> Interview with a Tribunal Judge, 11<sup>th</sup> January 2013.

<sup>19</sup> [Oni vs. Fayemi suit, 520](#).



litigation is ‘one like never before and almost all [the] verdicts [are] in line with what was spelt out in the constitution and not as proponents of arbitrariness had sought to foster on the people’ (Thisday, 2007).

*Figure 6.1 How much do you Trust Courts of Law?*



*Source:* Afrobarometer Round 4 (n = 2324 weighted results)

Perhaps the extent of acceptance of courts’ impartiality can be explained by the level of peoples’ trust and confidence in them. Figure 6.1 indicates that a significant proportion of Nigerians (40%) do have “somewhat” and “a lot” of trust in the Nigerian courts. It could also be argued that it is actually a majority (55% if we add “not at all” and “just a little” responses) who do not have trust in the courts. However, this distribution might be related to the prolonged years of weak judiciaries which were during the 16 consecutive years of military rule.<sup>20</sup>

Notwithstanding, there are challenges to the impartiality of the litigation, including allegations of corruption. For example, there were allegations against the judges to the extent that the NBA had to caution lawyers about defamatory allegations. The body argued that newspapers do not provide an apt forum for discussing judicial errors or a good place to eulogise or condemn judges

<sup>20</sup> See chapter two discussions about context.

(Vanguard, 2008). Also, a tribunal judge was found to have had 46 call contacts and exchanged several *sms text* messages with the counsel to an incumbent governor (The News, 2008).<sup>21</sup> As to what motivates such a relationship, several factors could be discerned. The most apparent, however, is that the judiciary is institutionally and financially constrained. It always ‘... has to go cap in hand for funds from the government.’<sup>22</sup> The gap between the budgets for effective management of the tribunals and the actual money appropriated left much to be desired in 2007. In fact, of the 4 billion Naira (£15,384,615.38) budgeted for the CoA only 700 million Naira (£2,692,307.69) was provided (LDC, 2009, p.53).

Consequently, the operational and administrative efficiencies of the tribunals continue to suffer and the court operational plans fail a victim. For example, each of the 16 divisions of the court and the 36 tribunals established every other election cycle is an island on its own. There is an absence of cross information among the courts. This might explain the different and contradictory verdicts in cases of similar claims by the courts. Whether this small budget explains the allegations of corruption remain debatable, as each tribunal chair and member as at 2007 earned a monthly package of (sitting, feeding, fuel and telephone honorariums) ₦ 475,000 (£1,826.92)<sup>23</sup> and ₦ 445,000 (£1,711.53). A Secretary earned ₦ 90,000 (£346.15) and an Assistant and Confidential Secretary earned ₦75,000 (£288.46) (LDC, 2009, p.54). This package, expectedly, should reduce monetary temptations as each member of the panel and other staff are also entitled to their primary employer’s salary which is based on a national minimum salary of ₦ 17, 000 (£65.38) per month.

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<sup>21</sup> What is more interesting is that these contacts happened at the peak of the cases (the 4 months between 1<sup>st</sup> December 2007 and 14<sup>th</sup> April 2008).

<sup>22</sup> Interview with a Tribunal Judge, 11<sup>th</sup> January 2013.

<sup>23</sup> This is at the 260 naira per pound (₦ 260/£1) exchange rate.

The adjudication is confronted by the partisanship of other government institutions that are critical to the administration of electoral justice. The resolution of electoral disputes in Nigeria depends largely on the cooperation of some key institutions like INEC and the police. The partisanship of these institutions influences the extent to which justice is achieved. A judge revealed that on several instances the bailiff had been denied access to serve court process either by police or gatemen.<sup>24</sup> In other cases, INEC frustrated tribunals and courts by not complying with orders. For example, the ETP sitting in Edo had to threaten INEC officials with jail terms for failure to produce the documents requested by the AC candidate and in Ekiti state, PDP thugs connived with state government officials and security agents to interrupt a forensic examination of ballot papers ordered by the tribunal (LDC, 2009, pp.82-3). In a sense, the above indicates that while the electoral adjudication in the 2007 elections appeared independent and has made giant strides towards protecting people political and civil rights, politicians seem to get away with other manipulative acts. This makes the examination of the standard of evidence required to prove an electoral allegation very significant.

*c) Burden and Standard of Evidence*

Electoral legislation in 2007 required an appellant to provide proof of his allegations. ‘He who asserts must prove,’<sup>25</sup> perhaps explaining why courts ascribed evidence provided to the petitioner. A CoA said: ‘the defence has been based on the grounds that the issue of qualification is distinct from that of nomination. That is true for the Nigerian electoral legal regime<sup>26</sup> and in view of the

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<sup>24</sup> Interview with a Tribunal Judge, 11<sup>th</sup> January 2013.

<sup>25</sup> Ibid.

<sup>26</sup> See section 28 of the Electoral Act 2006 and section 187(1) of the 1999 Constitution.

evidence of the appellants; the [first] respondent is not qualified to contest the election.’<sup>27</sup> Of interest here is the court reference to ‘the evidence of the appellants’ which indicates that by default it is the petitioner who provides evidence.

This principle is based on the assumption that all electoral officials involved in an election acted in accordance with the set rules and regulations.<sup>28</sup> Therefore, when an allegation is made against an electoral commission and the winning party or candidate, especially in a seemingly hybrid regime, ‘... the challenger may well lack the resources to properly maintain its rightful challenge while the challenged party would have the resources to produce evidence of a proper election’ (Vickery, 2011, p.60). However, and as I shall demonstrate below, this is an uncommon practice in both advanced and transitional democracies. It is among the recommendations put forward by the electoral reform committee in Nigeria on the 12<sup>th</sup> December 2008 which was not implemented by the Nigerian government.

*Table 6.2 Pattern of Administration of Evidence in the 2007 April Election*

Grounds of Appeal	Petition	Standard of Evidence		
		<i>Substantial</i>	<i>Beyond Doubt</i>	<i>Technical</i>
Qualification	6	5	-	1
Non-compliance with law	31	18	7	6
Unlawful exclusion	4	2	-	2
Total	41	25	7	9

*Source:* Author’s compilation

In terms of the standard of evidence, Table 6.2 indicates that the electoral arbitration admits and manages cases on substantial evidence and where necessary evidence beyond a reasonable doubt.

<sup>27</sup> *Buhari vs. Yar’Adua & Ors* (2008, February 26), CA/AAEP/2/07, CA/A/EP/3/07.

<sup>28</sup> See (Vickery, 2011, p.60 cf. supra note 176).

Substantial justice presupposes that a claimant has to provide tangible proofs that are convincing enough to establish his assertion. The Table shows that 25 of the 41 petitions examined were treated on the basis of substantial evidence, 7 on evidence beyond reasonable doubt, and 9 on technical grounds. Also, it shows that of the 10 cases filed on the grounds of qualification and unlawful exclusion, none were required to be proven beyond reasonable doubt as only allegations with criminal tendencies are required to be proven beyond reasonable doubt.<sup>29</sup> This explains the treatment of 7 of these cases on the grounds of substantial evidence. Among these cases is the AC governorship petitions in Kogi and Adamawa states which were upheld by tribunals and cancelled at appeal as the tribunal said: ‘... the exclusion was unlawful ... and there was no evidence to prove otherwise’ (Thisday, 2007).

Further the Table illustrates that 31 petitions were filed for electoral irregularities and more than half 18 equivalent (58%) were managed on the grounds of substantial evidence. For example, there is a joint petition filed by ANPP, AC, PPA and ARP in Cross River which the CoA nullified due to irregularities in the tabulation of scores and the alteration of result sheets (Vanguard, 2008). Looking at these developments, it could be argued that the resolution mechanism has worked towards ensuring that the interests of the majority (underprivileged) triumph over those of the minority (privileged). For example, the tribunal sitting in Edo state accepted that the admission of fictitious ballot papers and fake result sheets had defrauded the 2007 governorship election in the state. Thus, the tribunal declared AC candidate as the winner with 166,577 valid votes cast as PDP only had 129,017 of the total valid votes. The court arrived at these figures by subtracting the

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<sup>29</sup> Interview with a Tribunal Judge, 11<sup>th</sup> January 2013.

declared invalid vote scores for each candidate from the total declared valid votes for each party. This was a decision unanimously upheld by the appellate court (Abutudu & Obakhedo, 2009).<sup>30</sup>

In addition, the Table indicates that there were instances when the courts sacrificed merit over technicalities. For example, of the 8 presidential petitions filed against the return of Yar'Adua, 2 were thrown away on technical grounds by the first tribunal which described APGA's appeal as '...baseless having been raised for reasons of mischief' (LDC, 2009, p.71; *Cf.* The Guardian, September 4<sup>th</sup> 2007). Likewise, it rejected NAC's petition as it failed to '... disclose any reasonable cause of action and did not plead the results of the election as required by law' (EU, EOM, 2007, p.31). While such conclusions have some element of validity, the same could not be said of the petition filed by Buhari and his party. Both the first tribunal and the apex courts discredit the petition, arguing that the failure of INEC officials to take the oath of neutrality and impartiality could not have invalidated the elections and the sworn depositions of the petitioner's 18 witnesses contradict evidence law.<sup>31</sup> In fact, the lead judgement declared the petition as null and void and argued that no convincing proof was adduced by the plaintiff to establish that the winner benefited from non-serialisation of the ballot papers (*Buhari vs. INEC & Others, 2008*).

However, what constitutes substantial evidence in Nigerian electoral resolution remains unclear. In a democracy the credibility of an election can not be sustained when ballot papers are not secured. Thus, the dissenting judgement argued that 'it is difficult to see how a decent election can

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<sup>30</sup> That is, the court subtracts the total of 200,723 invalid votes of PDP from its total valid votes of 339,740 and the total declared invalid votes of 30,895 of AC from its total declared valid votes of 197,472.

<sup>31</sup> Evidence Law Act section (83) and Notary Public Act section (19). The latter requires that a witness deposition has to be sworn before a notary public but the 8 witnesses here swore before the counsel to the petition.

be conducted without serial numbers.’<sup>32</sup> This is true, as in electoral politics serial numbers are part of the features that safeguard the sanctity of the ballot (Alvarez & Thad 2008, pp.829–830). Therefore, when the courts upheld the 2007 presidential election, people questioned what constitutes substantiality. Many felt that on the grounds of evidence requirements genuine petitions are bundled out by tribunals and courts because they fail to comply with ‘technicalities’,<sup>33</sup> prove allegations ‘beyond reasonable doubt’,<sup>34</sup> or they are ‘miniature complaints’.<sup>35</sup> A respondent argues that ‘[o]nly in Nigeria and only under a government like PDP’s would these criminalities pass the sanction of the judiciary’.<sup>36</sup> These are believed to be some of the familiar excuses used by the judges to pay back the privileged group.<sup>37</sup>

## 6.2 *Electoral dispute mechanisms: The 2011 elections*

In the 2011 elections, the electoral legal regime provided for the establishment of an election petition tribunal (EPT) in each state of the federation. The tribunal has the jurisdiction to determine the election of a person as a member of the legislative assembly,<sup>38</sup> a Governor or Deputy Governor of a state.<sup>39</sup> Presidential petitions are only filed at the CoA<sup>40</sup> and appeals therefrom terminate at the Supreme Court.<sup>41</sup> The law also reduces the number of days needed to file a petition from 30 to

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<sup>32</sup> *Buhari vs. Yar’ Adua* (2008), Special Edition MJSC; Bamidele Aturu, Supreme Court on 2007 Election: Another Missed Opportunity, cited in (Junaidu, 2011).

<sup>33</sup> LDC, 2009, *supra* note 259.

<sup>34</sup> Vickery, ‘GUARDE’, 2011, *supra* note 183.

<sup>35</sup> (Haruna, 2008).

<sup>36</sup> Interview with an opposition candidate, 26<sup>th</sup> July 2012.

<sup>37</sup> A couple of interview respondents share similar views.

<sup>38</sup> The 1999 Constitution, section 285 (1a) (as amended).

<sup>39</sup> *Ibid.* subsection (2).

<sup>40</sup> *Ibid.* section 239 (1).

<sup>41</sup> *Ibid.* sections 233, 239 and 246.

21 days after the declaration of the result.<sup>42</sup> In addition, it provides a timeline for the determination of petitions to all courts and tribunals. For instance, tribunals are to be constituted two weeks before the elections and each must open its registry for business a week before the election.<sup>43</sup> Also, complaints filed at EPTs shall be disposed 180 days from the date of filing and 60 days when on appeal. The legal standing to challenge an election only remains open to candidates and political parties,<sup>44</sup> although individuals, prior to an election can challenge the candidature of an aspirant.<sup>45</sup> The PCA is empowered to provide practice direction<sup>46</sup> for electoral adjudication.<sup>47</sup> These changes were commended as they provided an equal opportunity and reduced the incumbent's unfair advantages (EU EOM, 2011, p.43; NDI, 2011, p.57; Vanguard, 2010). There were some minor problems, however, as some amended sections were challenged and the court annulled some.<sup>48</sup>

With these sizable provisions, it could be argued that adequate formal arrangements are being made for courts to adjudicate conflicts in pre-election periods. However, for unknown reasons litigants appear to be divided into two groups. The first group (that made up to 400 complaints) decided to take their grievances to INEC even though the latter does not have any jurisdiction to hear complaints. The second group went to the courts and filed about 375 complaints during the pre-election period (EU EOM, 2011, p.40). Perhaps people decided to complain to INEC

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<sup>42</sup> Section 134 (1) of the 2010 Electoral Act (as amended).

<sup>43</sup> Section 133 (3a and b) of the 2010 Act.

<sup>44</sup> Section 137 (a - b) of the 2010 Act.

<sup>45</sup> Section 31 (5 and 6) of the 2010 Act (as amended).

<sup>46</sup> This is guideline provided by the president of the court of appeal to all electoral tribunals and courts of appeals.

<sup>47</sup> Section 145 (1 and 2) of the 2010 Act (as amended).

<sup>48</sup> For example, ACN filed a petition challenging the legality of the amendment which stopped courts from declaring a second runner of an election as the winner in a Federal High Court in Lagos and the court held that the section is '... null and void and of no effect whatsoever and inconsistency with the constitutional provision which gives powers to the courts to make declarative injunctions' (Irekpen, 2011).



considering that there is trustworthy leadership now with Jega. No doubt his appointment rekindled people's hopes and anxiety for a good election as '... the leadership of The Commission over the years has been extremely deficient, but with Jega ... they have hopes.'<sup>49</sup> That 'At last! Here is a fair and impartial commission.'<sup>50</sup>

Unfortunately, INEC cannot undo any nomination made by political parties. So, it advises aggrieved parties to seek judicial redress (EU EOM, 2011, p.40). Also, it may be that the aggrieved parties are ignorant of the correct legal procedure. However, this does not seem to hold. Given the degree of the abuse of power and the mishandling of the nomination process in 2007, one would expect INEC to have dealt with more complaints in 2007 than in 2011 if the aggrieved parties are ignorant of the law. On the contrary, people went to courts more than they did during the 2007 elections. Another discernible explanation is the cost of justice. While the cost of filing could be said to be reasonable,<sup>51</sup> hiring a counsel is not easy as for lawyers the litigation period is a harvest period. The absence of a minimum cost for electoral litigation could be said to have given lawyers a blank cheque, hence INEC sounds cheaper.

In addition, Table 6.3 indicates that people are well aware of the legal regime and have utilised the courts over any other option. Out of the 92 complaints examined 11 categories are visible. Four of these complaints questioned the power of INEC to change the electoral timetable. The Labour Party's suit challenged the placement of the presidential election before the governorship election and the court declared that INEC does not have any power to change the sequence.

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<sup>49</sup> Interview with a CDD official, 13<sup>th</sup> November 2012.

<sup>50</sup> Interview with an INEC chairperson, 13<sup>th</sup> September 2012.

<sup>51</sup> The cost was 5,000 (£19.23) as at 2007 and 2011.

Table 6.3 Pre-Election Petition Management in 2011

Petition	Decided	Undecided	Total
INEC have the power to change elections order	2	2	4
Illegal substitution of candidate	19	21	40
Tenure of governors where courts have nullified elections	7	-	7
Challenging the candidate of the respondents	22	9	31
Challenging the legality of new voter register	-	1	1
Legality of section 140 (2) of Electoral Act 2010 (as amended)	1	-	1
INEC/RECs have been prevented from conducting an election in Osun	1	-	1
Lack of locus standing	1	-	1
INEC lack the power to disqualify candidates	1	-	1
Review of appeal judgment	4	-	4
Challenging electoral campaign fund	1	-	1

Source: Author's compilation

Also, the Table 6.3 shows that the majority of the complaints filed were on the illegal substitution of candidates and those challenging the eligibility of candidates. In fact, if we add the two together we get an overwhelming majority (77%). Interestingly, as the table indicates, the courts had resolved more than half (58%) of these complaints before the elections (EU EOM, 2011 Appendix C, pp.78-91).

Among the cases resolved there is the petition filed by 5 governors challenging INEC's power to conduct elections in their respective states. The governors hold that their tenure commenced the second time they took their Oath of Office when the court made invalid their elections of 2007. This legal battle made it difficult for elections to be held in these states. In its judgement, the Supreme Court holds that:

... a governor in a state in Nigeria is by law elected for a term of 4 years calculated from the date the governor took the Oath of Office, the intervening annulment of the election notwithstanding. Consequently, the tenure of the Governors began on the 29<sup>th</sup> day of May 2007 when they took the Oath of Office as elected Governors and the tenure terminated on the 28<sup>th</sup> day of May 2011 (*INEC vs. Timipre Sylva & Ors*, 2012).

The strength of this judgement is in the fact that it was a position well canvassed for by many democratic and legal activists. For example, it was described as a correct decision, in tune ‘... with the letters and spirit of the Constitution, which provides for a 4-year term for a state governor.’ It is an attempt to stop those who want ‘...to turn law and logic upside down for selfish motivations (Falana, 2010). Some volunteered their expertise and paid their legal expenses in pursuance of the case (Ajie, 2011).

*a) Timeliness of Proceedings*

Looking at the above discussion, it is apparent that in the 2011 elections, adequate provision was made to ensure the prompt management of electoral petitions. After setting up a timeframe for electoral adjudication, the PCA issued guidelines that regulate the conduct of courts and ensure the speedy dispensation of justice. Also, two tribunals were established in each state - one to look at complaints regarding governorship elections and the other regarding National and State Assembly elections. This is in addition to the reduction of the number of judges per court from five to three. This is to ease in house tension in decision-making. This helps explain the speedy resolution of petitions as by the end of February 2012 tribunals had overturned more than a dozen elections (NDI, 2012, pp.57–58; EU EOM, 2011, p.43).

Also, the speedy handling of the cases can be explained in quantitative terms as the volume of petitions filed by aggrieved parties fell drastically across the country (Thisday, 2011). For example, in Sokoto, the tribunal had no single case filed against either the National or State Assembly elections. Ondo state had only 5 petitions filed in contrast to the 64 recorded in the 2007 election (INEC, 2007; Junaidu, 2011, p.140). Anambra state which had a total of 134 (INEC, 2007)

or 148 (LDC, 2009, p.201, Appendix Nine) petitions against governorship, federal and state legislative assembly elections in 2007 only recorded 53 complaints in the 2011 election. This is also lower than the elections of 2003 and 2007 respectively.<sup>52</sup> In Nigeria as a whole, by the end of February 2012 the majority of these cases had been decided (NDI, 2012, pp.57–58; EU EOM, 2011, p.43).

Another possible explanation is that the courts have shown that justice delayed is justice denied. For example, the two petitions challenging the presidential return of Goodluck Jonathan by CPC and HDP<sup>53</sup> were decided within months. The initial petition by the CPC was filed on the 18<sup>th</sup> of May 2011 and the first tribunal and the final Supreme Court judgements were delivered on the 28<sup>th</sup> November 2011 (Idonor, Nnochiri & Akinrefon, 2012; Sahara Reporters, 2012).<sup>54</sup> The opposition party (CPC) questioned the elections of non-compliance with law and the candidate was not duly elected by the total valid votes cast in 24 states.<sup>55</sup> The petitioner claimed that the winner did not fulfil the legal requirement to win an election in Nigeria,<sup>56</sup> and therefore the result declared by INEC is wrong, invalid and unlawful as the elections did not produce a winner (*CPC vs. INEC & 42 Ors, 2011 cf.* NDI 2012, p.58; EU EOM 2011, Appendix D, p.92). The party put forward 151 witness depositions, to which the counsel to PDP replied, but in spite of these volumes the courts were able to reach a verdict before the expiration of the approved 180 days.

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<sup>52</sup> There were 560 petitions filed in 2003 and 1,250 in 2007 (Thisday, 2011).

<sup>53</sup> Hope Democratic Party (HDP).

<sup>54</sup> The Supreme Court judgement was actually delivered on the 28<sup>th</sup> of November 2011 (Channels Television, 2011)

<sup>55</sup> The party claimed that there were widespread irregularities in 17 states of the south and 7 in the north.

<sup>56</sup> Section 134 (2) of the 1999 Constitution (as amended).

At state level, tribunals demonstrated a similar commitment to time. For example, in Delta state the tribunal explained to counsels that it intended to round off business within the stipulated timeframe. It urged counsels to be diligent and meticulous while being conscious of time. This is to avoid unnecessary adjournments and delays (Vanguard, 2011). Another one in Oyo state notified counsels that it had only 180 days, therefore litigants are expected to cooperate and enable the tribunal to meet this deadline. In a practical demonstration of time consciousness, the tribunal ordered PDP's counsel to serve the court proceedings to his client by posting the proceedings on the walls of the client's last known address (The Street Journal, 2011). The same tribunal refused to grant a motion filed by the counsel to the Action Alliance (AA) that complained about the non-inclusion of his client's name on the ballot papers. In its response, the tribunal explained that the application lacked merit as it was withdrawn by the party long ago and because 115 days of the 180 days had elapsed, it was not possible for it to hear and address the motion within the remaining 2–3 months (The Street Journal, 2011). In short, the tribunals and appeal courts finished their assignments before the legal 180 days. Such promptness is essential in election disputes as '... speed is of the essence and justice must not be sacrificed on the altar of technicalities' (Sagay, 2008, p.13) and the faster the resolution of complaints the earlier the restoration of popular support<sup>57</sup> which is essential to electoral integrity.<sup>58</sup>

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<sup>57</sup>Vickery, 2011, p.54 cf. *Kwiecien vs. Poland*, Eur. Ct. H.R., and App. No. 51744 /99, Judgment of 9 Jan. 2007, p.55.

<sup>58</sup>See the Supreme Court of Ghana Manual, supra note 7.

*b) Impartial and Informed arbiter*

The independence of the judiciary, the electoral courts in particular, is indispensable to the quality of elections. Although the Nigeria judiciary is to a degree autonomous, some unfolding realities in the build up to 2011 suggest otherwise. While the judge's appointment, promotion and conditions of service have been protected, internal dynamics<sup>59</sup> within the judiciary before and after the 2011 election raised two important posers: Is this independence real and are the judges actually not corrupt? No doubt, an answer to these questions requires in depth analysis, but some inferential explanations are visible. Although, the National Judicial Council (NJC) 'exonerated' the then Chief Justice of Nigeria (CJN) and 'indicted' the President of the Court of Appeal (PCA), the perceptions of election observers, interview respondents and other stakeholders indicate the existence of some corrupt elements (*privilege*) that are ready to tamper with justice and others who are active and committed to the protection of the '*underprivileged*'.

The latter group are those who pursue the triumph of democracy over tyranny, while the former is a group of people who appear under the protection of the *privileged* group. For instance, it is reported that the then PCA refused to accept the promotion offered to him, because he feared that would pave the way for an amenable president who would dance to the tune of politicians (EU EOM, 2011, p.39). This refusal sparked confrontational relations between the then CJN and the

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<sup>59</sup> The crisis between the CJN and the PCA could be said to begin when allegedly the CJN invited the PCA on the 8<sup>th</sup> of February 2010 and requested for his intervention with the Sokoto Governorship Elections petition of 2007. The president refused the request and on the 16<sup>th</sup> a petition was filed at the CJN's office as the Chairman of NJC. The CJN invited the PCA for a second time and asked him to disband the panel before they delivered their judgement that was slated on the 24<sup>th</sup> of February 2010. The president said he would contact the panel and report back. Before the PCA report came back, the CJN on the 19<sup>th</sup> of February 2010 issued a letter of notice to stay action to the court pending determination of a petition against them (Vanguard, 2011; The Nation, 2011).

PCA. The latter claimed that the former asked him to compromise the governorship election petition verdict of the Sokoto Appeal Court. To investigate the matter, the NJC set up a first panel<sup>60</sup> which reported that the CJN has no power to interfere with any proceedings of the CoA (Alli, 2011). Perhaps the NJC was not satisfied with the outcome, as it set up another panel<sup>61</sup> and extended its mandate to other petitions<sup>62</sup> against the PCA. The panel in its report, while clearing both the CJN and PCA, demonstrated that there was no evidence to prove the claimed leakage of the Sokoto judgement, and the CJN did not interfere with the Sokoto proceedings or take over the running of the affairs of the CoA as he has no constitutional power to do so (Alli, 2011). For an undisclosed reason, the council further established another panel which cleared the CJN, the Justices that presided over the Sokoto, Osun and Ekiti CoA appeals, and indicted the PCA for misconduct and perjury (Anaba, Abdullah, Nnochiri, & Akinrefon, 2011).

This decision made people think that some corrupt elements within and outside the system are compromising the impartiality of the electoral resolution mechanism. For example, a lawyer said:

I know that there are powerful people who are not happy with [the president's] principles especially his stand during the CoA ruling which removed some governors from office. All I know is that [the president] is a victim of very powerful anti-democratic forces who have survived electoral frauds in Nigeria (Vanguard, 2011).

Reference to a powerful anti-democratic force and the benefactors of electoral frauds who have victimised the PCA indicates the presence of two forces at work. For the outside force, we could easily provide a name and identification tag – the politicians ready to do anything poor or foul to

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<sup>60</sup> This first panel was comprised of Justices Bolarinwa Babalakin, A. B. Wali, Anthony Iguh, Emmanuel Olayinka Ayoola and Mustapha Akanbi with Babalakin as the head.

<sup>61</sup> The panel was headed by a former PCA Justice Umaru Abdullahi with other members such as Justices E. O. Ayoola, D. O. Edozie. M. E. Akpiroroh and Mrs Rakiya Sarkin Ibrahim on the 9<sup>th</sup> of March 2011.

<sup>62</sup> There are other mysterious petitions against the appeal court rulings in the governorship election petitions of Ekiti and Osun states.

ensure they win. However, for those within, it is difficult to tell who they are. However, a renowned media practitioner and former Director General of the Nigeria Television Authority described them as judges that appeared to be ‘acting a script and ... are materially compromised with ease’ (Iredia, 2012). They are people who helped the outside forces ‘... who write results and tell you to go to tribunals and then they bribe the judges or remove the judges that they do not like to ensure that results are upheld. This is the system they have internalised.’<sup>63</sup>

It is on this basis that some judgements could be interpreted as for the *privileged* or the *underprivileged*. For the former, an example could be given of the appeal court which heard and judged the Adamawa state governorship election petition filed by ACN. The court was said to have compromised itself as the appeal was filed some days after the first tribunal delivered its verdict. Since then, the appeal court did not act on the case despite petitioners’ alarm two weeks before the expiration of the deadline. In fact, the petitioners had to write a complaint letter to the NJC challenging the court’s inaction and the NJC ordered the court to do its job 72 hours before the deadline. Within 24 to 48 hours, the court ruled in a manner akin to how decisions were made in primordial communities (Iredia, 2012). Such kinds of judgement are seen as judgements for the *privileged* group.<sup>64</sup> For the latter, the verdict on the 20<sup>th</sup> of October 2012 Ondo state governorship election petition could be mentioned. The first tribunal ruled that an election could only be voided

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<sup>63</sup> Interview with a civil activist and lawyer, 31<sup>st</sup> of August 2012.

<sup>64</sup> The party and its candidates challenged the governor on the grounds of qualification as he submitted a forged certificate. The first tribunal dismissed the complaint as a pre-election matter, a condition that is contrary to the Supreme Court judgement (*AC vs. INEC (2006)*, 6.n.w.l.r, (part 1029) 142 at 162). Upon appeal, the CoA set aside the tribunal judgement and ordered for a retrial. The governor went to the Supreme Court for interpretation and the apex court affirmed the position of the CoA. However, instead of going back to the tribunal court and asserting his case as the CoA had ordered, the counsel to the defendant filed a motion that the constitutional deadline of 180 days for the tribunal had lapsed and the petition should be dismissed (Benue Watch , 2012).



for non-compliance if the petitioner established that the irregularities claimed had affected the outcome of the election. The court dismissed the PDP allegation that the elections were disrupted by the distribution of food and other materials. It emphasises that witnesses put forward by the party could not establish any clear linkage between the act and the declared election results during oral cross-examination. Commenting on the judgement, the counsel to the PDP said: ‘the judgement has been accepted in good faith’ (The Street Journal, 2013). Other judges made it clear to the counsels that each litigant will be given a fair hearing and justice dispensed without fear or favour (Vanguard, 2011).

In short, the judiciary, despite internal and external challenges, keeps struggling for the common man. This has been aptly captured by a respondent in an interview who said:

the judiciary has been very problematic in terms of electoral dispute resolution for a number of reasons. One [is] the capacity of the political class to corrupt the judiciary by really commercialising and offering massive bribes that some judges are not able to resist. Second, [is] some of the judges have been susceptible to political pressure. However, you cannot generalise on that, as many judges have been able to give judgements that are considered generally correct judgements that reflect what happened. [Lastly,] the conditions set out in the Electoral Acts for electoral tribunals are often difficult for litigants to prove successfully, i.e. that the elections have been rigged and lots of cases have failed because the level of proof required by our judiciary is impossible.<sup>65</sup>

The next part considers the last aspect of this statement.

### *c) Burden and Standard of Evidence*

In the 2011 election the electoral dispute resolution mechanism maintains that a petitioner has to prove his assertions. There seems a unanimous acceptance among courts and court users that a person who asserts a particular state of affairs is duty bound to provide evidence of its existence.

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<sup>65</sup> Interview with a CDD official, 13<sup>th</sup> November 2012.

That is the electoral litigation mechanism worked on the principle that the onus is on the person making the allegation (Evidence Act 2011; Electoral Act 2010, as amended). This is what courts, tribunals and litigants seem to have internalised. For example, when the CPC requested an order from the court that INEC shall prove the validity of the elections (*CPC vs. INEC & 42 Ors, 2011*), the CoA indicated that the onus of proof is with the party not the electoral body and when the party had failed to do so, the case was dismissed (Sahara Reporters, 2011). Similarly, in an appeal against this ruling, the party stressed that the Justices of the first tribunal ‘... erred in law when they held that the onus was on the appellant’ (Daily Trust, 2011). However, the Supreme Court maintained that onus is on the person who alleged the act – the election result declared (Leadership, 2011).<sup>66</sup> In fact, the lead judgement argued that the: ‘allegation of non-compliance did not shift the burden of proof to the electoral body or the respondents.’<sup>67</sup>

Also, the electoral legislation maintains that a petitioner has to provide enough and convincing evidence to justify nullification. This is because an election can be voided for reasons of non-compliance when judges are satisfied that the violation has grossly altered the result.<sup>68</sup>

Table 6.4 indicates that most petitions filed during the period were treated by courts in this manner. In the majority (75%) of cases examined, the courts maintained that petitioners had failed to substantially prove their allegations.

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<sup>66</sup> Others such as the National Radio website say that the court unanimously held that ‘... the CPC failed to discharge the burden of proof placed upon it by the Electoral Act to prove its allegation that INEC did not conduct the election according to the provisions of the law. [And], the allegation of substantial non-compliance ... was not proved and that the burden of proof did not shift to the electoral body or any of the respondents to prove that the alleged allegation of non-compliance was enough to have affected the outcome of the election (Radio Nigeria Ibadan).

<sup>67</sup> Lead judgement read by Justice Olufunmilayo Adekeye.

<sup>68</sup> Section 139 (1), Electoral Act 2010 (as amended).

*Table 6.4 Pattern of Administration of Evidence in 2011 Election Resolution*

Grounds of Appeal	Petition	Principle of Decision		
		<i>Substantial evidence</i>	<i>Beyond doubt</i>	<i>Technical justice</i>
Qualification	1	1	-	-
Non-compliance with law	9	7	-	2
Not duly elected by valid vote	2	1	-	1
Total	12	9	-	3

*Source:* Author's compilation

For example, in the presidential petition above, both the CoA and the Supreme Court made it clear that allegations that invalid votes were included in the total number of votes for PDP in Katsina were not substantiated with any verifiable evidence. Also, the witnesses called to testify for the plaintiff have indicated that they were not at the polling units where the alleged corrupt practices have taken place in the state. Some even contradicted one another during the cross-examination and criminal allegations need to be proved beyond reasonable doubt (Sahara Reporters, 2011). So, it was concluded that the petitioner did not provide adequate evidence to prove his claims (Daily Trust, 2011).

Despite this, the underprivileged still regard the judiciary as the last hope of the common man. Perhaps the reason why CPC lost the case had to do with the party's failure to obtain relevant evidence required to establish its claims. Instead, the party continue to insist that the onus lies with the accused. The presidential aspirant, for example, stated that '... INEC refused to cooperate with us to conduct a forensic examination of finger printed ballot papers.'<sup>69</sup> While this appeared reasonable, the party might be seen to assume that with the recommendation made by ERC that '... since the conduct of INEC as the umpire is the issue in many petitions, INEC should bear the

<sup>69</sup> Interview with an opposition candidate, 26<sup>th</sup> July 2012.

burden of proving compliance with the Electoral Act' (ERC, 2008, pp.148 & 150). Therefore, with Jega as the INEC Chair and a member of the committee that made the recommendation, INEC would agree to do this. However, to be fair to Jega and INEC, both are bound by the law that established INEC and the laws guiding the conduct of elections. Thus, INEC and Jega do not have the power to change the electoral litigation procedure. Also, the CPC in its first petition only requested the provision of election materials, but did not indicate clearly that they wanted the 'original' documents. On this ground, INEC issued to CPC a certified true copy of the election materials which is the main tradition. Nevertheless, others insisted that the case was predetermined by the justice system<sup>70</sup> which refuses to ensure that CPC can access and inspect all the relevant materials needed.<sup>71</sup> Indeed, the Voter Awareness Initiative (VAI) and News Agency of Nigeria (NAN) groups felt that the petition was lost when the first tribunal refused to force INEC to provide materials for forensic examination (Daily Trust , 2011).

Despite these reservations, the tribunals at the state level have significantly worked towards ensuring that the petitions were handled on merit. For example, on the petition filed by PDP challenging the return of the ACN candidate as the governor of Oyo state on the ground of dual citizenship, the court explained that dual citizenship only applies to citizens who are not Nigerians by birth (The Street Journal, 2011). Also, the House of Assembly Tribunal in the state nullified the election of the PDP member representing the Orelope State Constituency as the said winner did not get the majority of the valid votes cast. The tribunal arrived at this decision after considering the evidence tendered for the elections as conducted at ward 2 polling unit 2, ward 3

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<sup>70</sup> Itse Sagay reported in Vanguard, Dec. 29<sup>th</sup>, 2011.

<sup>71</sup> Bamidele Aturu, reported in Daily Trust, Dec. 29<sup>th</sup>, 2011.

polling unit 3 and ward 10 in unit 1 which were fraught with irregularities and non-compliance and were therefore null and void. The court went further to explain that the petitioner has failed to establish similar case in the elections of ward 1 polling unit 4, and ward 10 polling units 9 and 12. Therefore, it subtracted 523 votes from the 6,484 total votes recorded for ACN and 284 votes from the 6,335 total votes recorded for PDP and declared the ACN candidate as the winner (Vanguard, 2011). This example suggests the judiciary struggles to remain a beacon of hope for the underprivileged and has handled disputes more on substance and merit than technicalities.

However, there were instances where tribunals and courts favoured technicalities over substantial evidence. For example, the tribunal that heard the petition filed by ACN against the return of the Akwa Ibom incumbent governor in the April 2011 elections dismissed the petition because the ‘appellant could not pick or choose which provision of the law to follow and which not to follow’ (Thisday, 2011). Such a technical judgement does not promote merit as the reason behind the judgement was that the counsel to the petitioner did not seek the leave of the tribunal before filing a motion ex-parte. Explaining this, the counsel to the governor indicates that in an election tribunal a petitioner shall seek the leave of an election tribunal before the commencement of a pre-hearing while applying by way of motion ex-parte (Thisday, 2011). Such a judgement prompted the then CJN to plead with the tribunals to uphold justice over technicalities. He said: ‘I’m begging in the name of justice, matters should be decided on their merit and not technicalities’ (Vanguard, 2011). In other words, the rules of procedure in law are instruments of justice, not the other way round (Vickery, 2011, *supra* note 185, p.63; *cf.* Dosanto et al., 2007).

In a sense, the above indicates that in 2011 the burden of proof was with the petitioner and all allegations, including criminal accusations had to be substantially established. In fact, criminal allegations usually require the claimant to provide evidence beyond reasonable doubt. This could be because that is what the law requires and criminal allegations can easily destroy a person's political future. Thus, while this appears strict, it is better to consider the political terrain and the attitude of politicians in new democracies. This will protect and safeguard people's lives and integrity. However, as indicated before, the limits of substantiality and reasonable doubt remain vague. In fact, what is substantial evidence or beyond reasonable doubt is at the discretion of the judges to determine, as the law does not provide clear cut rules on this. Neither does any international consensus provide a standard which an appellant has to meet in order to establish electoral fraud or misconduct (Vickery, 2011). Consequently, electoral judgements could be on the basis that A's evidence appears more convincing than not or election results no matter how bad have an inclusive validity and therefore stand (Vickery, 2011, *supra* note 179, p.62).

### *6.3 Conclusion*

This analysis suggests that electoral dispute resolution mechanisms in Nigeria have considerably improved the quality of elections. What is unclear, however, is whether successful electoral resolution directly leads to electoral integrity. Perhaps the arrow of causation looks double-headed. Certainly, where elections are well-organised the number of petitions drops and the management becomes easy. The opposite is also true. However, causality is difficult to determine as the quality of an electoral contest may differ depending on the factors at play. Internal dynamics within an electoral system could pollute the process and so are other outside considerations. For a long time in Nigeria, reference has been made to how politicians, political parties, legal frameworks and

citizens' vulnerability often contaminate the electoral process. Yet, the inability of Nigeria to build a robust democracy has been blamed on judicial inaptitude and dishonesty, especially during the periods of military rule (Olurode, 1990; Unube, 1990).

Acknowledging that the democratic quality of an election cannot be independent of external factors, a systematic examination of how judges handle electoral disputes in Nigeria reveals that the gradual improvements recorded cannot be unconnected from some transformations within the justice system. This chapter points to three possible areas of interception between electoral resolution and credible elections.

First, it was the courts that restored the legitimacy of the electoral process and sustained the country's democratic project. The electoral resolution became an active and useful tool for checking and balancing the abusive tendencies that characterise Nigeria's the winner takes all politics. This horizontal accountability<sup>72</sup> has helped in managing elite disputes, as when key oppositions were disqualified to contest the elections, the courts ordered for their inclusion. Also, in places where the elections were over and the party of the excluded winner came first, they were ordered to be sworn in as the duly elected candidates. In instances where the excluded candidate's party was second or third in the elections, the tribunals and courts voided the elections and order a re-run.<sup>73</sup> Similarly, in the 2011 election the courts intervened and resolved serious conflicts, including the petition between INEC and the 5 governors who were struggling to extend their authority to rule beyond the lawful 4 year tenure. Also, the courts settled various party intrigues

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<sup>72</sup> Horizontal accountability is referred to here as used by Diamond and Morlino (2005, pp.xxi-xxv).

<sup>73</sup> This was how people like Ararume, Obi, Mimiko and Alao-Akala either became governors or were reinstated to finish their office tenures after the 2007 election.

which could have resulted in street violence among the party factions.<sup>74</sup> This idea that fair electoral resolution enhances the public perception of the legitimacy of the electoral regime has been supported in the existing literature (Mozaffar & Schedler, 2002; Vickery, 2011; Eisenstadt, 2002).

Also, practical experiences across Africa and elsewhere support this view. For instance, in the recently conducted elections of Kenya and Ghana, the Supreme Courts have to make decisions that relate to electoral legitimacy. In Ghana for example, the Ghanaian opposition candidate and party trusted the Supreme Court of Ghana to resolve the alleged irregularities in 10,119 out of the 26,002 polling stations of the country (Kwarteng, 2014).<sup>75</sup> It is interesting to know the presiding Justices were divided on other counts of charges, including complaints of over voting, voting without proper accreditation and the absence of signatures on results sheets, yet the court upheld the elections. A similar practice was recorded in Nigeria when the adjudication process rescued the country from political ruin in 2007 (Vickery, 2011, p.4; Stewart, 2006, p.6; Joseph & Kew, 2008). So, regardless of absolute independence or not, the task of electoral dispute resolution is to certify or discredit an outcome (Fabrice, 2003) which can ameliorate electoral errs and build procedural legitimacy (Mozaffar & Schedler, 2002, p.11).

Secondly, the improvement recorded in the management of electoral disputes upgraded political competition. Although, this is not direct, as the judiciary became assertive, politicians, political parties and other governmental bodies like INEC began to observe the rules of the game. Indeed,

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<sup>74</sup> *Petition No. EPT/KG/NASEN/2/2011* cf. EU EOM, 2011, p.42, supra note 142. A few examples are the ordering for a fresh PDP primary election to determine the party's senatorial flag bearer in Kogi state and the resolution of who the governorship candidate is for CPC in Kano, Katsina and Taraba states.

<sup>75</sup> BBC news reported the opposition accepting that in an election involving millions of voters there are bound to be errors, however, they content why all the arithmetic irregularities are in favour of the incumbent (BBC News Africa, 2013; OMGGhana, 2013; The Africa Report, 2013).



there was no record of INEC disqualifying any political opponents in the build up to 2011. Instead, there is a report which indicates INEC advised aggrieved politicians to seek judicial redress (EU EOM, 2011). In short, the extant literature supports the existence of a relationship between electoral frauds and active electoral dispute resolution (Eisenstadt, 2002; Vickery & Shein, 2012).

Indeed, the independence and fairness of the resolutions reinforces the degree of the electoral competition both in qualitative and quantitative terms. For example, the strength of political competition in the 2011 election is far beyond that of 2007 which, as the previous chapter indicated, is below the continental average of 0.59 in both the presidential and legislative elections. While this is not an indication of causation, the shift in the contest still cannot be unconnected to the proactive role of the judiciary which has the authority to restrain abusive tendencies (Mozaffar & Schedler, 2002, p.9; Kerr, 2013, p.7). Qualitatively, this chapter indicates that there is an element of interaction between the performance of electoral litigation and electoral quality. In fact, the downfall of petitions filed from 1,270 to 500 in 2007 and 2011 respectively indicates an increase in the observance of the rule of law which is essential to democratic quality (O'Donnell, 2005).

Finally, electoral dispute resolution intersects with electoral quality as its central aim is the protection of citizens' right to participation. This is the most important aspect as it has been the central concern of almost all liberal democratic theories. Since the defence of rights is the cornerstone of democracy, then, election and by extension the resolution of electoral complaints is an institutional design against the tyranny of either the individuals or government. Therefore, any unlawful exclusion from the contest by the courts is an attempt to restore that safety valve that will protect tyranny (Katz, 1997, p.47). In this regard, the exclusion of ACN presidential and

governorship candidates, who were all from Adamawa state, and two PDP governorship candidates who were substituted by their party and the electoral body cannot be seen as anything but an effort towards reinstating the candidates' political rights.

On the side of the electorate, since voting is an act of decision-making (Katz, 1997), any attempt to discredit electoral fraud, institutional or otherwise, is a move towards the protection of the sanctity to vote. Therefore, in societies where procedural violations and outright electoral manipulations are commonplace, tribunal and other court judges are instruments for reinforcing voter or vertical accountability (Diamond & Morlino, 2005, pp.xix-xxi).

In addition, the chapter demonstrates that in societies where incumbent arbitrariness is everywhere, presence and effectiveness of political competition and participation require sound institutions that seek to protect the interests of the underprivileged. This is in tune with the argument that the settling of electoral disputes is vital to the presence or lack of electoral legitimacy, competition and participation as it erodes ingrained mistrust which can hinder organisational design to fight against frauds (Mozaffar & Schedler, 2002). Although the question of corruption among judges remains, there was still no established evidence of indictments. However, some respondents, mainly the opposition and those that left the ruling party or were dumped by the party, continue to raise this claim. By implication, these findings echo a well stated position that the relevance of examining electoral dispute resolution is long overdue. Indeed, the need for a specific and systematic study of electoral adjudication and electoral justice could open up another virgin political terrain that explains the apparent democratic shortfalls of both new (Eisenstadt, 2002, p.63) and established democracies (Stewart, 2006, p.667). In these societies, especially the former,

petitions, complaints and judgements, although they could have nuances, generate enough detailed information for the study of political democratisation (Mozaffar & Schdler, 2002; *cf.* `Elklit & Reynolds, 2000, 2002, 2005; Pastor, 1999). Also, it indicates the need for electoral observation missions to consider the possibility of extending their period of stay or sponsoring an approved domestic team that will cover the period of electoral adjudication as this is central to the credibility of elections and democratisation.

## *Chapter 7 Conclusion*

This thesis has examined what constitutes democratic elections and how electoral governance impacts on electoral quality in Nigeria. Acknowledging that these concerns are theoretically bounded, the study began in Chapter Two with an analysis of the Nigerian state as the arena of electoral contest, setting the stage for the argument that there is the need for a more enhanced definition of democratic election. Following is Chapter Three which discussed some of the existing attempts at conceptualising electoral quality and highlighted the inherent weaknesses of these efforts. It shows Lindberg's conception of democratic election as a remarkable beginning towards a robust empirical understanding of democratic elections, but concludes that some of its indicators needed further development.

The conceptual gap that the thesis identified in Lindberg's conception of democratic elections replicates a broader theoretical tension that characterises the comparative literature on democratisation. To bridge this gap, the chapter showed that studies in political democratisation are increasingly recognising the significance of electoral institutions in explaining democratic quality. For example, recent studies of electoral politics in Latin America and Africa suggest the analytical value and utility of electoral institutions in explaining the political power struggle in these political systems (Hartlyn, McCoy, & Mustillo, 2008; Birch, 2011; Bogaards, 2007). This necessitates the need for a more systematic approach with greater conceptual clarity and a contextual focus (Adcock & Collier, 2001; Munk & Verkuilen, 2002; Munck, 2006).

This thesis brings these insights together and systematically sets electoral governance as an explanatory variable in studying the democratic quality of elections in Nigeria. It argues that a

straightforward notion of democratic election, when studied from the viewpoint of electoral administration, has the potential to move forward our understanding of some important political terms such as participation, competition, incumbency and the abuse of incumbency, and above all democracy and democratisation. The central aim is to understand what makes an election democratic and how the institutional dynamics of election management influence electoral integrity. The study examines these questions in the context of the 2007 and 2011 general elections in Nigeria. Evidence from the Nigerian case demonstrates democratic elections are a complex and dependent process, emphasising the relevance of autonomous electoral authority, efficient electoral cycles and impartial electoral dispute resolution. It shows that the failures and achievements recorded in the 2007 and 2011 general elections respectively, depend largely, but not exclusively, on effective electoral governance. After revisiting the research problem, this chapter looks at the implications of this finding on the concept of democratic elections, and its theoretical and empirical contributions to democratisation debates. Following that is its contribution to electoral practitioners both within and outside Nigeria.

### *7.1 Democratic Quality of Elections: Revisiting the problem*

Students of democratisation agreed that for democracy to flourish there have to be periodic elections. Despite this consensus, there are some who favoured recurrent elections irrespective of the type of election (Lindberg, 2006; 2009; Hadenius & Teorell, 2007) and others who highlighted the importance of high quality elections in deepening democracy (Levitsky & Way, 2010; Bogaards, 2013; Schedler, 2000 & 2006; Morse, 2012; Bratton, 2013). While each of these groups has offered traces of frameworks of analysis, none provide a complete conceptual model for assessing democratic elections. Thus, this thesis finds Lindberg's (2006) democratic elections to

be a better beginning for a more straightforward conception, as it provides some interesting essentials of elections in transitional regimes. At the same time however, it highlights some of the inherent lapses of this idea and makes a case for its revision.

Firstly, I illustrate that while voter turnout, presence of the opposition and the absence of autocratic guards are important indicators of political participation, Lindberg limits the influence of other factors that could have far-reaching effects on participation. For example, while using turnout as a measure of participation, he does not fully engage with other primary factors such as positive inducements of patronage and negative sanctions of coercion which have a strong connection to voter turnout in Africa (Elischer, 2013; Bratton, 2013). Moreover, voter turnout in Nigeria could be explained by other contextual factors.<sup>1</sup> Also, the existing literature points to the relevance of other strategic calculations in explaining the presence or absence of the opposition in transitional regimes, indicating the difficulty of judging election quality based on the likelihood of opposition boycotts (Gandhi & Lust-Okar, 2009).

Secondly, the thesis shows that while Lindberg indicated that a democratic election must have concrete electoral contestation, competition is still measured using ‘vote-share thresholds’ which do not measure the strength of individual actor competitiveness. Scholars, in particular Diamond (2002; 2008) and Bogaards (2007), have emphasised that an effective evaluation of electoral competition is needed to reduce overconcentration on electoral outcomes and to focus on other

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<sup>1</sup> See Chapter Two’s discussions on context.

components of electoral processes that structure the presence or absence of individual actor competitiveness.

Other significant attempts at conceptualising democratic elections include the works of Levitsky & Way (2010) and Birch (2011). For the former, an election is free when there is little or no fraud or intimidation towards voters, and fair when all contestants campaign freely on an even footing (Levitsky & Way, 2010). However, Levitsky & Way failed to operationalise free and fair elections, and instead focused on unfair elections, the components of which seemed to disregard other important factors such as citizens' participation. Equally, while Birch provided a more liberal conception of democratic elections, the requirement for policy voting reduced its empirical utility. However, this indicates the existence of a linkage between election quality and some elements of electoral conduct including the autonomy of the electoral commission and electoral processes. Accordingly, the thesis argues that an enhanced notion of democratic election, when examined from the viewpoint of electoral administration, has the potential to move our understanding of some important political terms such as participation, competition, incumbency and the abuse of incumbency, and above all democracy and democratisation. The next section looks at these contributions.

## *7.2 A New Conception of Democratic Elections*

The apparent conceptual ambiguity of electoral authoritarianism literature and its reiteration of the failures of transitional regimes demonstrate the need for a straightforward conception of democratic elections. The thesis undertakes this task, pointing to the importance of other dimensions of election quality over concentrating on turnout and vote-share thresholds which

neglect the impacts of electoral structures on elections. It makes a case for the importance of electoral governance, which kept recurring among scholars of hybrid regimes, but has not been analytically integrated into the study of electoral politics. It was not until Pastor (1999), Eklit & Reynolds (2000; 2005) and Mozaffar & Schedler (2002) provided a persuasive research agenda that the analytical value of electoral governance gained prominence. Mozaffar and Schedler, in particular, categorised electoral governance into three levels - rulemaking, application and adjudication, arguing that its central task is to act as an institutional safety valve for democratic uncertainty. To cross the inordinate methodological complexities of getting relevant data for valid inferences, they outlined four different approaches.<sup>2</sup> While these efforts provide the required analytical linkage between election quality and electoral governance, there have been a few empirical examinations<sup>3</sup> of which neither, to my knowledge, has contextual groundings.

This thesis bridges this gap, bringing about new insights of what constitutes electoral quality. It argues that a more enhanced concept of a democratic election, when situated within the broader setting of electoral administration could enhance our understanding of electoral authoritarian regimes and democratisation forward, providing a better empirical focus. Specifically, it has the potential to extend our knowledge of key political terms such as participation, competition, incumbents and the abuse of incumbency. Evidence from the Nigerian case demonstrates the impacts of electoral governance on election quality, indicating that the 2011 election was better

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<sup>2</sup> See Chapter One for a detailed discussion on these approaches.

<sup>3</sup> In particular, mention could be made of Birch 2008; 2011; Hartlyn, McCoy, & Mustillo, 2008; Hall, Manson, & Patterson, 2009; Norris, Frank, & Coma, 2013; and Bland, Green, & Moore, 2013.



than the 2007 election as the former showed greater levels of participation, competition and perceived legitimacy.

Overall, acknowledging the difficulty of establishing causation, Chapters Four, Five and Six offer the analytical application of this new conceptual model to the conduct of the 2007 and 2011 elections in Nigeria. In Chapter Four the result of the analysis indicated that there is a strong connection between the autonomy of the electoral commission and the democratic quality of elections in Nigeria. Chapter Five sustains the argument for the independence of electoral governance over election quality, confirming the view that shortcomings even in one step of the sequence or a link in the chain of the electoral cycle can undermine the democratic quality of elections. Likewise, Chapter Six suggests some important points at which effective electoral dispute resolution enhances the quality of electoral contest in the country. Thus confirming that elections are credible when administered by a neutral, competent and resourceful electoral authority, when the electoral cycles including electoral logistics and access to voting and vote counting are impartially handled, and when the police force and courts treat contending candidates and parties impartially (Diamond & Morlino, 2005; Diamond, 2008). Revisiting these findings illustrates some implications for the three identified attributes of democratic elections.

#### *a) Participation*

The thesis demonstrates that the 2011 elections are more inclusive and participatory than the 2007 elections. This is not because the 2011 elections recorded a higher voter turnout compared to the 2007 elections, but because it successfully listed almost all eligible voters in the country (90%). While on the other hand, the 2007 registration had disenfranchised almost 10 million or 13.3% of

Nigeria's eligible voters. This variation might appear insignificant, however, we need to consider that the total of over 73 million eligible voters declared in the 2011 elections was after the removal of a total of 870,612 cases of multiple and underage registrants; while the 61million voters used during in the 2007 elections had several cases of multiple, underage and phantom registrants among which there were names like Bill Clinton and Nelson Mandela. Also, there seems no record of any attempt to clean the voter list. On the contrary, evidence indicated INEC's failure to make the register available to all including voters and political parties. A discernible explanation is the incumbent's control of the electoral commission, its administrative activities and budget in the 2007 election which subverted the registration exercise. Indeed, when in the 2011 election the INEC was absolved from such influences, The Commission planned and effectively implemented a better electoral process. It made operational a total of 119,000 polling centres which is incomparable with the use of a handful of machines to run the same number of registration centres in the 2007 election. Indeed, from all of the narratives, the 2011 elections had better registration machinery and thus provided a more comprehensive national voter roll. Therefore, this confirmed the view that a good democracy provides all its citizens with the basic right to participate in public affairs.<sup>4</sup>

It could be argued that getting all eligible voters on a national voters list does not account for participation, as people can only claim participation when they cast their votes. Thus, looking at the voter turnout of the 2007 and 2011 presidential elections (57.49% and 53.68% respectively) for example, it is difficult to see any significant differences. While this is true, it is at the same

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<sup>4</sup> Article 25 - of Universal Declaration of Human Rights.

time difficult to see how the result declared could be acceptable, as I found that two types of presidential election results. One which indicated 35, 397 and 517 as the total valid votes cast, in which the winner and second runner scored 69.60% and 18.66% of the total votes and another which showed 35, 425 and 208 as total valid votes cast, in which the winner and the second runner scored 69.96% and 18.65% respectively. Also, assuming we accept the figures, introducing the new measure of effective participation, the result indicates both the 2007 and 2011 elections as poor, with each falling below 0.5 during the presidential elections. In addition, the legislative elections are poorer, as in the 2011 election the result is so insignificant close to perfect non-participation (0.26). Even worse, is efforts at getting the total number of valid votes cast during the 2007 legislative elections proved unsuccessful, making it difficult to make a statement about the quality of the legislative elections. This result lends support to the view that voter turnout in Africa is dependent on other factors such as positive inducements of patronage and negative sanctions of coercion (Elischer, 2013; Bratton, 2013; Gandhi & Lust-Okar, 2009).

Also, evidence points that the right and duty to vote are institutionally dependent, and the opportunity to vote rests with the extent to which electoral implementation makes voting possible, simple and accessible to all. In this regard, I indicate that the 2007 electoral logistics have failed to provide adequate registration and electoral materials to different parts of the country. This act deprived several individual participants the chance to cast their votes, and undermined their right to participate. This is contrary to the 2011 election when the electoral preparation and implementation was commended on almost all accounts. In other words, in a country like Nigeria where a person is only allowed to vote when registered as a voter, controlling electoral processes such as the supplying of adequate registration and electoral sensitive materials is like controlling

people's frequency and intensity of participation.<sup>5</sup> Moreover, democratic quality is only high when citizens participate in voting, electoral materials are sufficiently provided, and voting centres are well-publicised and made operational at a convenient time (Diamond & Morlino, 2005; Birch, 2011).

Again, participation may be constrained by other factors such as the apathy of citizens often implanted by the long period of ineffectiveness of other democratic mechanisms such as electoral dispute resolution. Acknowledging the difficulty, if not impossibility, of connecting electoral adjudication in the build up to the 2007 election in Nigeria with the quality of the elections as the latter preceded the former, the thesis integrates past experience and demonstrates that the 2011 election was more inclusive in terms of citizen participation than the 2007 election. While there is no evidence to establish this claim, few will doubt the role of electoral dispute resolution in protecting citizens' right to participate. However, since the defence of the individual's right to participate is the central concern of democracy, then, election and by extension the resolution of electoral complaints is an institutional design against tyranny. Moreover, elections are credible when disputes are resolved by an impartial and transparent electoral resolution mechanism (Diamond, 2008; Vickery, 2011; Eisenstadt, 2002).

#### *b) Competition*

Competition is at the heart of any decent election and democracy. However, competition, it is argued, could be altered by '... partisan control of the electoral administration' (Diamond &

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<sup>5</sup> See discussion on the pattern of the democratic quality of elections in Nigeria in Chapter Three for an adequate explanation of the frequency and intensity of participation.

Morlino, 2005). Evidence shows that the 2011 election is better than the 2007 election in terms of effective competition between and among political actors. The 2011 election showcases higher indications of the presence of effective competition among parties and candidates as against the 2007 election. For example, as against becoming a dominant party winning 70% of the total votes cast in the 2007 presidential election, the ruling-PDP only won the 2011 presidential election with 57% of the total share of votes cast. Indeed, the second runner alone scored a significant proportion of the votes cast (31%), which is far beyond the 18% scored in the 2007 presidential election.

In addition, using the measure of effective competition, this thesis indicates that individual contestants faced more challenges in the 2011 election than in the 2007 election. For example, the presidential, senatorial and house of assembly elections each recorded an effective competition that is almost close to a perfect competition (0.73, 0.71 and 0.79 respectively). This record is above the national and continental averages (0.59). This is incomparable with the 2007 election that fell below all of these averages. This confirms that an effective explanation of electoral competition requires looking at the significant components of the electoral processes that structure individual actor competitiveness (Diamond, 2002 & 2008; Bogaards, 2007). Evidence practically demonstrates that the electoral administration during the 2007 election was troubled, and experienced what appears to be an executive meddling in the operational functions of the electoral authority. The different perspectives show how some reforms of the INEC's status in the 2011 election produced an alternative result, providing a level playing field for the effective engagement of all contestants in the elections.<sup>6</sup>

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<sup>6</sup> See Chapter Four.

Equally, competition can be constrained at certain levels of electoral implementation such as candidate nomination, campaigning, and so on. The literature indicates that credible electoral cycles have a significant influence over election quality (Mozaffar & Schedler, 2002; Schedler, 2002; Birch, 2011; Norris, 2013). More specifically, institutional settings such as the party system can hinder the quality of an election as the action and inaction of political parties can diminish the intensity of the political competition (Diamond & Morlino, 2005). Thus, the thesis demonstrates how in the build up to the 2007 election, the incumbent was seemingly strategising and manipulating the electoral process in order to maintain their party in power. Indeed, the failure of the 2007 general election could be attributed to the suppression of the internal party democracy that characterised the ruling PDP and other parties as a whole. Although, it is believed that the emergence of this problem in other parties seems connected to the crises of nomination within the PDP.<sup>7</sup>

Also, the subversion of electoral competition could be perpetuated by outright electoral frauds committed at the level of electoral adjudication, and controlling the judges could be the easiest way to control electoral outcomes (Eisenstadt, 2002). In Nigeria, this seems to be the case, especially before the 2007 election. However, when the judiciary becomes assertive, checking the abusive acts of individuals and organisations, the rate of abuse of the electoral rules and regulations by political actors reduces considerably. Politicians, parties and governmental organisations like INEC began to observe the rules of the game. For instance, instead of assuming it had the power to disqualify candidates as it did in the 2007 election, INEC during the 2011 election refused to

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<sup>7</sup> For details see Chapter Four.

get involved beyond the supervision of party primaries during candidate selection.<sup>8</sup> Instead, in instances where there were complaints, The Commission was reported to have advised complainants to seek court redress. Among such cases is the dispute over the senatorial flag bearer of the PDP in Kogi state in which the courts ordered for fresh primary elections to determine the right contestant. Also, there were serious complaints about the rightful governorship candidate for the CPC in Kano, Katsina and Taraba states.<sup>9</sup> In short, one could argue that as the courts became active, political parties started to use other methods of managing elite wrangling over deliberate substitutions of candidate, as witnessed in the 2007 election.

The above substantiates the argument that the use of ‘vote share thresholds’ and power turnover (Lindberg, 2006) while significant in explaining electoral competition, seems distant from other essential attributes of competition.<sup>10</sup> For instance, the thesis indicates that the 2007 presidential election is less competitive compared to the 2011 election, which has fallen far below the average of all other elections conducted in the country since 1999 to date.<sup>11</sup> Also, the 2007 legislative election is poorer closer to perfect non-competitive election, confirming that all those who contested and won both as president or a congress member in 2007 did so comfortably and all losers whether second place or otherwise only established a presence among voters (Bratton, 2013). On the contrary, those who contested and won elections in the 2011 election either as president or a member of congress faced more challenges. In fact, despite fielding an incumbent candidate in the 2011 election over a handpicked successor in the 2007 presidential election, the

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<sup>8</sup> For details see Chapter Six.

<sup>9</sup> Ibid.

<sup>10</sup> Morse, (2012), Bogaard, (2007), and Diamond, (2002; 2008).

<sup>11</sup> See Chapter Three.

PDP struggled to get re-elected in the last 2011 election.<sup>12</sup> Empirical realities across the West African sub region complement this argument, highlighting the significance of electoral administration, the electoral cycle and electoral adjudication in altering the electoral processes in Cape Verde,<sup>13</sup> Benin,<sup>14</sup> Ghana<sup>15</sup> and others parts of the continent.<sup>16</sup>

*c) Perceived Legitimacy*

Lastly, an election which is perceived as legitimate is characterised by the absence of intimidation, violence and repression either through the abuse of state institutions such as the electoral authority, police, the electoral courts or other informal instruments of coercion such as engaged thugs. As Diamond & Morlino, (2005, p.xvii) argued:

Participation may be constrained by conditions of lawlessness and violence that make it risky for citizens to organise, assemble, or even to vote. To preserve their own entrenched privileges, powerful groups may, by means of intimidation and victimisation, suppress the political influence of the poor, the landless, as well as ethnic, regional and religious minorities.

Evidence from the comparative study of the two elections in Nigeria complements this argument. Regarding the 2007 elections for example, it could be argued that the privileged group – politicians, candidates and their clientele, were able to use this advantage. As the thesis highlights, the then incumbent president and party made it clear that the 2007 election was a matter of life and death. Subsequently, different acts of state repression were reported and cases of violence against oppositions documented. Election observers have reported instances of the use of thugs during

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<sup>12</sup> For the debate on the relevance of fielding an incumbent and an incumbent handpicking a successor see Cheeseman (2010).

<sup>13</sup> (Fall, 2011).

<sup>14</sup> (Hounkpe, Benin, 2011).

<sup>15</sup> (Hounkpe, 2011).

<sup>16</sup> (Makulilo, 2011; Gazibo, 2006).



campaign and elections. In fact, from the pre- to post-election periods the entire process was marked by different cases of violence and intimidation. For example, TMG catalogued, between February and March, 13 cases of pre-election violence and intimidation across the country.<sup>17</sup> The extent of the abuse of state power before, during and after the elections led to the conclusion that the 2007 election was the worst ever held in Nigeria.<sup>18</sup> While the 2011 elections, particularly, the presidential election, experienced post-election violence, the election days themselves are seen as free and fair.<sup>19</sup> This substantiates the view that violence, intimidation and state repression can alter the quality of elections in different ways (Fabrice, 2003; Ozor, 2009). For example, Chapter Four shows how the electoral logistics fell a victim of state repression during the 2007 election when strategic staff of the logistic department were accused by the EFCC and arrested some days to the elections.

Also, individual actor competitiveness was altered when state power was deployed in determining who shall contest what office in the build up to the 2007 election. For example, evidence indicates how formidable contestants both within the PDP and the opposition were arrested by the EFCC, indicted by an administrative panel of inquiry and subsequently disqualified from the contest by the electoral commission despite court restraining orders. Typical examples include the Vice President who was removed from the ballot papers by The Commission and some other governorship candidates who were either disqualified or removed from the ballot papers in what appeared to be a move to pave the way for PDP candidates. The defacing of the picture of the

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<sup>17</sup> See Table 1 in TMG, 2007, p.78. Also, there are a couple of similar cases of violence perpetuated against women in pp.118-127.

<sup>18</sup> According to the ERC (2008), after analyzing over 2,000 memorandums, the 2007 election is the worse ever held in Nigeria.

<sup>19</sup> See Figure 5.6, Chapter Five.

governorship candidate of ACN in Adamawa state on the ballot papers is another classic example. Similarly, Chapter Five presents evidence of keeping the opposition contestant under what appeared to be house arrest by the Nigerian police. This is in addition to an indifferent police who witnessed ballot box stuffing, snatching and multiple voting but did nothing. In other instances, they were reported to have kept voters at bay, while PDP agents and thugs stuffed ballot boxes. This explains the conclusion that '[a] democratic arrangement founded on such fraud can have no legitimacy' (TMG, 2007, p.136).

This is incompatible with what transpired in the 2011 election when INEC refused to get involved in the process of candidate nomination but referred aggrieved groups and individuals to courts. In addition, it makes sure that police were trained on how to manage electoral tensions. In fact, the setting up of the Inter Agency Consultative Committee on Election Security forum (IACCE) has enhanced the security arrangement of the 2011 election by balancing the attitude of the security personnel on election duty. This is in addition to enhanced electoral logistics including the use of functional cars in each of the 774 local governments of the federation. This view that a legitimate electoral process enhances electoral competition has been supported by extant literature. It is said that competition diminishes when parties and other actors suppress the freedom of different groups and parties to stand for election (Diamond & Morlino, 2005). Furthermore, evidence indicated that the gradual improvements recorded in the 2011 election have been the result of some transformations within the electoral justice system. In short, this thesis demonstrates that in societies where the abuse of incumbency is high, equality in political competition and participation requires sound electoral adjudication. In short, the above indicates that an election is participatory when equal voter suffrage is assured, prepared using a genuine voter list, adequate registration and

election materials are provided, the electoral process is free from fraud, repression or intimidation, people's right to participate either as voters or candidates is safeguarded without discrimination, and when its quantitative score equals 1. It is competitive when the election has passed the test of quality and quantity, as enumerated in the relevant sections of the empirical chapters. Finally, it is legitimate when it is peacefully and equally managed by an impartial electoral commission.

### 7.3 *On Democratisation and Competitive Authoritarianism*

This study builds on the assertion that elections lead to liberalisation and democratisation, not the other way round (Lindberg, 2006). The study points out that 'moving from authoritarian rule to a competitive electoral regime tends to lead to further democratisation' (Lindberg, 2006, p.145). In other words, it is only when elections are truly competitive, as Lindberg rightly pointed out, that 'successive uninterrupted cycles of elections tend to promote greater *democraticness*.' Moreover, the phrase 'successive uninterrupted cycles of elections' can be interpreted to mean continuous non-disruption by external - military intervention - or internal - excessive political meddling – forces, each of which has its effects on civil and political rights and freedoms. In fact, practical evidence indicates that from 1999 when Nigeria returned to civil rule the country staggered along the path of democratisation like almost all other African countries. This continental backslide towards autocracy suggests the need for better elections (Bogaards, 2013).

This is not a total rejection of Lindberg's seminal contribution. On the contrary, this study envisages a potential congruence between the demo-optimists and pessimists by indicating that either poor quality or high quality elections are relevant to democratic progression. However, the collaborative effects of each on democratic consolidation differs. The latter enhances political

participation, presence of competition and sometimes power alternation. For example, while power alternation is yet to be seen at the presidential level in Nigeria, a couple of instances are observable at state level. Umaru Tanko Al-Makura defected to the newly formed CPC after losing the PDP governorship primaries in Nassarawa state and won the 2011 governorship elections against the incumbent Aliyu Akwe-Doma of PDP in the state. On the other hand, the former sustains democratic popular support by 'stimulating activism in society even more than free elections do' (Lindberg, 2009, p.328). The rise of popular mandate protection by the electorates particularly in Kano and Bauchi states during the 2007 election and in the majority of parts of the north during the 2011 election is consistent with this view. Besides, Bratton has recently observed an inverse relationship between the downfall of elections' quality and popular support for democracy in Africa, and concludes that 'low-quality elections can sometimes stimulate democratic action' (Bratton, 2013, p.38).

In addition, a closer examination of the management of elections in Nigeria reveals significant details that make an election democratic or authoritarian and more or less competitive. For instance, in the last concluded 2011 elections we have seen how PDP obtained a super majority (apparently 100% minus 1%) in 11 states of the South South and South Eastern regions which is the first such record in the country's 89 years of electoral politics. This demonstrates that ruling elites may use demographic factors such as ethnic, tribal and kinship ties and so on to 'signal to opponents that a contest is hopeless' (Gandhi & Lust-Okar, 2009; Magaloni, 2006). This and other evidence suggests the rationale behind the view that '... the role of elections in political development depends critically on their quality' (Bratton, 2013, p.18) as the resources of

manipulation in the hands of incumbents are numerous and the tendency for all being sermon during each poll is high (Przeworski, 2010).

Also, arguments about clientelist politics appear to neglect the role of institutions of electoral authoritarianism – the authoritarian electoral commission, party, security apparatus, and incumbents - in explaining electoral competition. Quite rightly the majority of existing attempts at explaining party politics in Nigeria and Africa as a whole neglect important conceptual ingredients to the extent that the ‘democratisation potential of African parties ... is hardly ever evaluated vis-à-vis the political reality of the African predicament (Elischer, 2013, p.264). This sheer disregard has touched electoral politics as the analysis of voting behaviour seems to be predominated by ethnic conception despite the fact that political behaviour and political calculation are bonded by institutions (Rhode, 1995, March and Olsen, 1984; Ostrom, 1999; and Fox and Miller, 1995). Thus, I argue that the effective electoral governance in Nigeria and perhaps everywhere is essential to reliable elections. Conclusively, this study revisits the arguments about democratisation by election, adding that both poor and high quality elections have an effect on democratisation.

#### *7.4 Future Research*

The finding that the democratic quality of elections in Nigeria relates to the nature of electoral management prompts pertinent questions about the use of global norms, vote thresholds, voter turnout and policy options that are available to voters, or in general electoral results to determine electoral quality and by extension democratisation. This study indicates that while these explanations are valid, there is the urgent need to narrow down to electoral institutions. Therefore, research interested in election integrity should build on Lindberg’s conceptualisation of

democratic elections and blend it with emergent insights about election integrity to build a systematic framework for analysing elections in transitional regimes.

For those interested in Nigeria, there is the need to raise questions regarding the relevance of legal frameworks in guiding electoral competition. Studies are pointing to the importance of analysing the *de jure* nature of electoral laws and regulations versus their *de facto* applications, especially in internal party politics (Bland, Green, & Moore, 2013), and in democratisation and the establishment of capable governments (Bratton, 2013). Others highlight that contrasting the experiences different countries have had with democratisation can be explained by the respective status of their electoral commissions (Birch, 2011; Gazibo, 2006; Hartlyn, McCoy, & Mustillo, 2008; Makulilo, 2011; Kambale, 2011). This study provides a concise framework that allows for the examination of the relationship between electoral governance and democratic elections. Further interest in the area can be broken down to micro analysis by examining the relationship between demographic factors such as population census or between the federal system and democratic elections.

For Lindberg (2006, 2009), Birch (2008, 2011) and Levitsky & Way (2010)'s conceptions of free and fair elections provide the possibility to study the relationship between the electoral process and the party system in developing nations. Political parties are important institutions in electoral process. Scholarship particularly on Nigerian democratisation has acknowledged that the party system in the country has been '... invented by, and in the interests of, the state and its governing regime which, unfortunately, [has] reflected elements that are more autocratic than democratic, more uncivic than civic, more unstable than stable, more corrupt and self-seeking than transparent

and patriotic, and more predatory than developmental’ (Agbaje, 1997, p. 378), yet, little is known about how political parties in Nigeria pair with democratic elections. It would be safe to argue that the literature on the party system in Nigeria began with Richard Sklar’s *Nigerian Political Parties: Power in an Emergent and African Nation* (1963) and rises and falls with Richard Joseph’s *Democracy & Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic* (1987). This dearth is not helpful to our understanding of democracy and democratisation in the country and Africa as a whole.

Working with this thesis’s operationalised framework, research that is interested in democracy and elections can rekindle this area, especially considering the availability of the new party typology developed by Sebastain Elischer (2013). Indeed, the relevance of the political party system in electoral competition in Nigeria has been emphasised as the executive power of the presidency appeared unchecked and unbalanced by the legislature, judiciary and every successive president continued to rule or operate above the law (Agbaje, Akande, & Ojo, 2007; Hoffmann, 2010). Such a study can concentrate on the role of parties in shaping electoral behaviour, frauds and conflict. Indeed, it is observed that it is the emergence of ‘unsuitable cronies, criminals and strong-arm “godfathers” to public office’ (Bratton, 2013, p.137) that blocked good governance in Nigeria. Further, the current insurgence in the country by the Boko Haram group could be explained from the perspective of party politics and elections.

### 7.5 *Some Recommendations*

This thesis provides three incentives for democracy promoters, electoral practitioners and policy makers. First, there is a need for electoral observation missions to consider the possibility of

extending their period of stay or sponsoring an approved domestic team that will cover the period of electoral adjudication as this is central to the credibility of elections and democratisation. This thesis indicates electoral courts and judges as essential to Nigeria's, if not Africa's, democratic project. The increasing acceptance of the courts as the proper channel for resolving electoral conflicts by political elites has helped in sustaining political stability and social harmony in the country. For example, a former president expressed that while elections in the country continue to be dogged by widespread irregularities, frauds and violent intimidation, '... all hope has not been lost as ... the judiciary has been enough of a saving grace' (Obasanjo, 2009).<sup>20</sup> Thus indicating that there is the need to strengthen this institutional safety valve for democracy to flourish. However, care needs to be taken so that judges are not made to override the popular vote as the ultimate source of political authority.

In other words, the international democracy assistance should recognise the relevance of courts in democratic transition as the political delicacy of transitional regimes offers incumbents the opportunity to cheat during elections. If all efforts to restrain politicians' manipulative tendencies pre-election and on the polling day failed, the presence of non-partisan monitors at the level of adjudication might limit undue influence and increase the fair resolution of disputes. It is at this level that the opposition brings to the fore all available evidence within reach to show how elections are rigged. Thus, there is the likelihood that the presence of non-partisan monitors could trigger fairness which is likely to increase trust in democracy, discourage undemocratic political culture and enhance electoral legitimacy. Based on this trade-off between electoral adjudication

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<sup>20</sup> Thisday, Feb. 15<sup>th</sup>, 2009.



and electoral integrity, election and democracy assistants need to have a definite strategy for monitoring electoral litigations, otherwise, we will continue to have unstable ‘halfway’<sup>21</sup> houses that stagger toward autocracy.

Secondly, the significance of political parties in democracy necessitates the need for election and democracy promotion efforts to explore the possibility of extending their activities to cover political parties. Viable and real political parties are indispensable for democratic rule. Parties in a democracy perform a bundle of functions – bridging the gap between state and civil society, aggregating popular interest, structuring popular votes, integrating and mobilising the citizenry, training and recruiting national leaders and making them an important block in the construction of a solid democracy.<sup>22</sup> Thus, unless the institution that strengthens any democratic project is put in shape, the dream of having a viable democracy in Nigeria would remain a process that is empty of the much needed requisites of democratic content and credentials. Conversely, while financially constrained, democracy promotion efforts should within the little funds available, set a programme in motion that seeks to orient political party members and officials on the value of integrating party principles with developmental goals, otherwise we run the risk of losing previous democratic investments.

Finally, there is the need for more constitutional reforms that would empower the Nigerian electoral commission with statutory electoral powers and functions to conduct elections and to financially detach it from the executive. Otherwise, the electoral commission would remain fragile

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<sup>21</sup> For a discussion on halfway houses see (Huntington, 1991).

<sup>22</sup> In such a political schema, parties sharpen the pattern of political socialisation, participation, recruitment, competition and governmental performance (Katz & Mair, 1995 & Hout, 2003).

and by extension so would the elections. This recommendation is supported by other practical experience across Africa. For example, it was reported that finance was used to exert influence over the administrative powers of the Directorate General for Electoral Process (DGAPE) and the National Electoral Commission (CNE) in Cape Verde (Fall, 2011). In Benin, the *Commission Electorale Nationale Autonome* (CENA) had to wait for two months to secure a court order before funds were released during the 2006 presidential election and in the 2008 local government and municipal elections it had to conform to strict financial rules before procurements were reimbursed (Hounkpe, Benin, 2011). Also, the Electoral Commission of Ghana (ECG) was disrupted and had to reschedule the voter registration exercise in the 2008 election (Hounkpe, 2011) just as funds were withdrawn so as to force the Zanzibar Electoral Commission to accept identity cards for voters' registration when it wanted to use birth certificates (Makulilo, 2011).

## 7.6 Conclusion

The conceptual and empirical debate of the thesis upholds that elections are an essential democratic institution, as without elections a political system can never be democratic. As the ultimate and conventional route to political power, elections are thriving all over the world including places never envisaged. This challenges the classical theorisation of economic development and vibrant civil society, re-echoing the efficacy of political institutions in explaining democratisation and political life. The shift in democratisation studies towards electoral authoritarianism provides an impetus for a new research agenda in comparative politics that requires a straightforward conception of democratic elections with a clear focus on context and institutional variables. Put succinctly, how do we develop a methodology to gauge and then assess the democratic quality of

elections? What makes an election democratic and how do institutional dynamics of electoral governance influence electoral integrity?

A great deal of work needs to be done to address these concerns and as indicated, democratisation literature has been helpful, but further theoretical, methodological and empirical developments are necessary. Theoretically, this thesis establishes the foundation for a new straightforward conception of democratic elections. It showcases the need to disintegrate the complex processes involved in electoral politics and simplify the same into a concise working definition. In this regard and using multiple methods, the thesis examines the perspectives of election observers, interview respondents and Nigerians on the conducting of the 2007 and 2011 general elections. Each of these sources strengthens one another, explaining the various interconnections between the democratic quality of elections and electoral governance in Nigeria. As a whole, this comparative study provides a contextual explanation of key political terms like participation, competition and perceived legitimacy.

While understanding that politics in new democracies such as Nigeria requires a micro political approach, the empirical evidence examined indicates the use of election related institutions by incumbents to hold on to the power. Thus, this confirms the literature that states incumbents in new democracies do manipulate the media to alter electoral uncertainty, allow the existence of formal autonomous electoral commissions but constrain their performance efficiencies, perpetuate frauds and malpractices at different stages of the electoral cycle to ensure success. In other words, they use the state apparatus to structure and make legitimate their victory over their opponents.

In addition, the study echoes a well-stated position that the relevance of examining electoral dispute resolution is long overdue. The need for a specific and systematic study of electoral adjudication and electoral justice could open up another virgin political terrain that explains the apparent democratic shortfalls of both new (Eisenstadt, 2002) and established (Stewart, 2006) democracies. Electoral petitions, complaints and judgements, while having some nuances could generate detailed information to enhance the understanding of democratisation. Thus, by concentrating on one of the most important aspects of democracy – election, we can achieve a simpler analytically enhanced concept of democratic elections which will ease the critical methodological challenges that characterise the comparative studies of democratisation and extend our understanding of democracy and democratisation.

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Research Officer INEC Electoral Institute 14/09/2012

Former National Secretary of INEC and Permanent Secretary 1/11/2012

Former Military President of Nigeria and 3 times Presidential aspirant 26/07/2012

Former FCT Minister from 1999 – 2007 and politician 31/08/2012

Civil activist and a lawyer based in Abuja 31/08/2012

Director, Centre for Democracy and Development, an academic and civil activists 13/11/2012

Director, Centre for Democratic Development, Research and Training (CEDDERT) 16/11/2012

Hon. Justice of Court of Appeal and member of different Electoral tribunals 11/1/2013

TMG National Programme Officer 23/08/2012

Federal Civil Servant (Bauchi state) 23/08/2012

Former electoral commissioner (2<sup>nd</sup> Republic) 08/01/2013

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INEC State Public Relations Officer (phone call 25/09/2013)

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## *Appendices:*

### *A1: Comparative constitutional provisions of INEC Autonomy*

<b>Constitution</b>	<b>Who appoints?</b>	<b>Tenure</b>	<b>Powers and functions</b>
1963	Governor-general with the advice of the prime minister who is to consult regional premiers section 45 (4).	5yrs from the date of appointment section 45 (6) (a, b, )	The Commission in the exercise of it functions, shall not subject to the direction or control of any other person or authority section 45 (9).
1979	President subject to confirmation by the Senate section 141 (1 c & 3)	Same as above	Same as above
1989	President in the case of national governing board but in the case of state commissioners, he appoints but on recommendation of The Commission Third schedule, part I, H, section (18 – 19).	Same as above but state commissioners tenure is not included section 153 (1c)	In addition to what is obtained in the 60s, here The Commission is given the right to appoints it staff and take disciplinary action section 156 (1).
1999	President subject to senate confirmation and after consultation with the council of state section 154 (1-3). However he is at liberty to appoint all the 36 plus 1 commissioners of the states and FCT without consultation nor confirmation of anybody.	5 years with renewal tendency. But to qualify for appointment on ehas to be aligible to contest for the membership of the House or representative of which one has to be a member of a political party	Same as above, but I thas to seek presidential approval of its administartive rules and regulations section 160 (1).
1999 (as amended) <sup>(b)</sup>	Same as above, but he has to seek senate confirmation for the appointment of all commissioners including those in the states	Same as above but remove membership of a political party section 156 (1) (a).	Same as above but The Commission is not subject to the approval of anybody to regulate it own affairs section 160 (1)

*Source:* <sup>(a)</sup> Note this table format and the information from 1963 – 1999 are from: Junaidu, A. (2011). Nigeria. In I. M. Fall, M. Hounkpe, A. L. Junaidu, & P. Kambale, *Election Management Bodies in West Africa: A Comparative Study of the Contribution of electoral Commissions to the Strenthning of Democracy*, (pp. 122-123). <sup>(b)</sup> data on this row are from my personal field research on Nigerian electoral legal provisions.



## *A2: Index for the Study of Democratic Quality of Election in Nigeria*

Setting the basic rules of democratic elections	Capacity/Institutional capacity/ Conduct of EMB Notorious and unenviable/electoral umpire Institutional weakness/Deliberative structural ambiguity Nomination of commission members Impartiality of EMB/ Fundamental structural and institutional constraints Not being independent INEC leadership report to president Financial freedom/Available funds/ Financial autonomy/ Pace and time of funds disbursement/ Financial Structural & operational impediment Administrative capacity/Absence of service longevity of all key appointed staff
Implementing the electoral process	Legitimacy of elections - integrity/honesty/and transparency of the process popular perception Official recruitments of INEC officials Democratisation of INEC Staffing strength/Ad hoc staff strength Transparency of process/Infrastructural capacity/Technological capacity Leadership quality inclusiveness and effective input mechanism from other stakeholders like CSOs, NGOs, CBO sect Deficiencies of electoral laws Credible electoral processes
Voter protection	compilation of voter register construction of polling booth delimitation of federal const. printing ballot paper Total disregard to actual votes compiled Illiberal mechanism for the registration Parties needs state power, armies, thugs and money competitive rigging
electoral violence and political conflict	Competitive rigging/pre & post-election rigging getting state institution meet citizens civic aspiration rigging/malpractice/chicanery/frauds/intimidation/persecution subversion of democratic processes

### A3: Katsina State Presidential of Election Result Sheet

INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)		PRESIDENTIAL ELECTION 2011 - 16TH APRIL 2011																						
SUMMARY OF RESULTS OF STATE																								
NAME OF STATE:		KATSINA																						
CODE:		KT																						
		VOTES RECEIVED BY PARTIES																						
S/N	NAME OF LGA	TOTAL NO REGN	ACN	AOC	ANPP	APR	APR	BHP	CC	IFP	NDP	LOPR	MPP	NC	HMOP	NT	PDC	PPC	PM	PPP	SDPR	UNFD	TOTAL VALID VOTES	
1	BAKORI	01	103560	346	41	506	50	35	127	48,383	107	27	5	39	45	60	25	63	19,548	88	63	3	23	89392
2	BATAGARAWA	02	90851	431	59	240	83	48	170	25,095	102	47	36	94	81	96	108	263	14,242	239	174	54	100	41692
3	BATAGARI	03	104183	487	64	238	77	43	155	28,380	141	64	39	107	83	133	110	204	17,401	726	174	28	28	50878
4	BAURE	04	31343	417	30	276	38	35	121	38,120	111	27	22	46	39	78	43	86	10,999	95	66	25	19	38775
5	BINDAWA	05	73351	163	30	94	17	22	114	28,820	111	27	22	46	39	78	43	86	10,999	95	66	25	19	38775
6	CHARANGHI	06	60775	78	10	67	16	19	78	20,558	10	10	10	20	42	38	35	69	11,467	73	40	13	27	42719
7	DAL-MUSA	07	79205	245	6	78	6	6	50	29,643	31	4	4	16	20	17	15	16	10,681	23	3	3	2	40732
8	DANDUMA	08	74462	230	10	124	8	12	81	38,647	57	7	8	10	22	21	6	16	8,485	24	21	5	5	54405
9	DANJUMA	09	89966	201	8	125	9	7	83	40,609	60	13	9	9	9	9	16	10	12,632	47	29	6	14	48936
10	DAURA	10	77874	205	18	107	17	16	111	43,698	42	8	4	7	38	35	8	31	4,881	22	35	0	8	48936
11	DUTSI	11	51858	148	8	109	12	5	47	13,382	27	8	4	8	24	28	19	43	8,956	33	21	6	5	23890
12	DUTSINAMA	12	103730	382	59	248	55	35	170	35,424	127	50	52	109	137	124	106	278	14,920	228	128	25	43	65243
13	FASKARI	13	104336	372	10	238	14	7	125	39,671	52	15	15	28	28	24	10	17	16,560	29	29	4	11	77620
14	FULTATA	14	159834	341	22	203	15	14	148	83,129	95	18	8	11	62	50	17	60	11,131	28	28	2	7	96260
15	GAWA	15	86781	311	81	169	38	38	131	29,870	81	37	28	46	45	74	66	101	10,921	74	80	17	37	36552
16	JERU	16	101287	638	60	268	86	43	166	30,119	156	82	36	119	84	106	128	221	15,024	117	81	13	36	43021
17	KAFUR	17	116275	208	21	165	41	27	162	60,948	88	44	33	89	89	74	74	562	81,100	134	110	24	37	70156
18	KATA	18	71719	482	70	130	47	20	118	19,828	88	44	33	89	89	74	74	562	81,100	134	110	24	37	70156
19	KAWURA	19</																						

*A4: (a) 2007 Presidential Election Result (INEC copy)*

INDEPENDENT NATIONAL ELECTORAL COMMISSION								
PRESIDENTIAL ELECTION RESULT 2007								
S/N	NAME OF PRESIDENTIAL CANDIDATE	GENDE	NAME OF VP CANDIDATE	GENDER	PARTY	SCORE	%	REMARKS
1	ATIKU ABUBAKAR	M	SEN. BEN OBI	M	AC	2,637,848	7.45	
2	PROF. PATRICK.O. UTOMI	M	ENGR. IBRAHIM USMAN	M	ADC	50,849	0.14	
3	SIR LAWRENCE FAMAKINDE ADEDOYIN MAJ. GEN. MUHAMMADU BUHARI(RTD)	M	ALHAJI ALI ABACHA	M	APS	22,419	0.06	
4	GCFR	M	RT. HON. EDWIN UME-EZEIKE	M	ANPP	6,605,299	18.66	
5	CHIEF EMMANUEL OSITA OKEREKE	M	HAIJIYA ASABE MAUNA	F	ALP	22,677	0.06	
6	DIM CHUKWUEMEKA ODUMEGWU-OJUKWU	M	ALHAJI HABIB IBRAHIM GAJO	M	APGA	155,947	0.44	
7	CHIEF ADEBAYO ADEFARATI	M	ALHAJI MAHMUD DANJUMA SANI	M	AD	89,241	0.25	
8	DR. IHEANYINCHUKWU GODSWILL NNAJI	M	DR. ADAMU MUSA HAIJIYA KABIA YASAI AFFAH (CENGIS)	M	BNPP	11,705	0.03	
9	MAXI OKWU	M		F	CPP	14,027	0.04	
10	ATTAHIRU DALHATU BAFARAWA	M	ENGR. EBERE UDEOGU	M	DPP	289,324	0.82	
11	REV. CHRIS O. OKOTIE	M	FEJA AKINOLA BINUTU	M	FRESH	74,049	0.21	
12	CHIEF AMBROSE OWURU	M	ALHAJI IBRAHIM DANJUMA	M	HDP	28,519	0.08	
13	MAJ. DR. REV. MOJISOLA A. ADEKUNLE- OBASANJO(RTD)	F	MOHAMMED MOHAMMED ABDULLAHI	M	MMN	4,309	0.01	
14	DR OLAPADE AGORO	M	EGHENAYHEORE DELE AYI (MRS.)	F	NAC	5,752	0.02	
15	DR. OSAGIE O. OBAYUWANA	M	MAL. YUNUSA S. TANKO PRINCE CHUDI CHARLES	M	NCP	8,229	0.02	
16	ALHAJI ALIYU HABU FARI	M	CHUKWUANI	M	NDP	21,974	0.06	
17	DR. AKPONE SOLOMON	M	ALHAJI ABDULLAHI S.ABDULLAHI	M	NMDP	5,664	0.02	
18	MAL. AMINU GARBARTI ABUBAKAR	M	PRO. KINGSLEY ONYE-EZE IBE	M	NUP	4,355	0.01	
19	PROF. ISA ODIDI	M	OLUWAFOLAJIMI AKEEM-BELLO	M	ND	5,408	0.02	
20	GALTIMA BABOYI LIMAN	M	ABITI ONOYOM NDOK	M	NNPP	21,665	0.06	
21	DR. BRIMMY ASEKHARUAGBOM OLAGHERE	M	MALLAMA ZAINAB GOGGO BAYERO	F	NPC	33,771	0.10	
22	UMARU MUSA YAR'DUA	M	DR. GOODLUCK JONATHAN	M	PDP	24,638,063	69.60	ELECTED
23	ARTHUR NWANKWO	M	MOHAMMED ABDULLAHI	M	PMP	24,164	0.07	
24	ORJI UZOR KALU	M	INUWA ABDULKADIR	M	PPA	608,803	1.72	
25	CHIEF SUNNY JOSEPH OKOGWU	M	HAJIA LARAI UMARU	F	RPN	13,566	0.04	
	TOTAL VALID VOTES					35,397,627	100.00	
	REJECTED VOTES					714,800		



A4: (b) 2007 Presidential Elections Result INEC declared, posted, & removed

<b>NIGERIA</b> <b>21 April 2007 Presidential Election</b> Differing figures are highlighted in RED.				
	Final Results announced by INEC Chairman Maurice Iwu, 23 April 2007 (African Elections Database)		Final Results posted on the INEC Website <sup>1</sup>	
Registered Voters	61,567,036		61,567,036	
Total Voters (Voter Turnout)	Not Available (approx. 58%)		Not Available (approx. 58%)	
Invalid/Blank Votes	Not Available		Not Available	
Total Valid Votes	35,397,517		35,425,208	
Candidate (Party)	Votes	Percentage	Votes	Percentage
Umaru Musa Yar'Adua (PDP)	24,638,063	69.60%	24,784,227	69.96%
Muhammadu Buhari (ANPP)	6,605,299	18.66%	6,607,419	18.65%
Atiku Abubakar (AC) <sup>2</sup>	2,637,848	7.45%	2,567,798	7.25%
Orji Uzor Kalu (PPA)	608,803	1.72%	608,833	1.72%
Attahiru Bafarawa (DPP)	289,224	0.82%	289,324	0.82%
Chukwuemeka Odumegwu Ojukwu (APGA)	155,947	0.44%	155,947	0.44%
Pere Ajuwa (AD)	89,241	0.25%	89,511	0.25%
Chris Okotie (FRESH)	74,049	0.21%	74,049	0.21%
Patrick Utomi (ADC)	50,849	0.14%	n/a <sup>3</sup>	
Asakawon Olapere (NPC)	33,771	0.10%	33,771	0.10%
Ambrose Owuru (HDP)	28,519	0.08%	28,518	0.08%
Arthur Nwankwo (PMP)	24,164	0.07%	24,164	0.07%
Emmanuel Okereke (ALP)	22,677	0.06%	22,592	0.06%
Lawrence Adedoyin (APS)	22,409	0.06%	22,459	0.06%
Aliyu Habu Fari (NDP)	21,974	0.06%	21,974	0.06%
Galtima Liman (NNPP)	21,665	0.06%	21,665	0.06%
Maxi Okwu (CPP)	14,027	0.04%	14,027	0.04%
Sunny Okogwu (RPN)	13,566	0.04%	13,566	0.04%
Iheanyichukwu Godswill Ifeajiri (BNPP)	11,705	0.03%	11,705	0.03%
Osagie Obayuwana (NCP)	8,229	0.02%	8,229	0.02%
Olapade Agoro (NAC)	5,752	0.02%	5,692	0.02%
Akpone Solomon (NMDP)	5,664	0.02%	5,666	0.02%
Isa Odidi (ND)	5,408	0.02%	5,408	0.02%
Aminu Abubakar (NIJP)	4,355	0.01%	4,355	0.01%
Mojisola Adekunle Obasanjo (MMN)	4,309	0.01%	4,309	0.01%

<sup>1</sup> The website that posted the final results of the 2007 Presidential Election is no longer active. A page containing the results was retrieved using the Internet Archive Wayback Machine:  
[http://web.archive.org/web/20070513202947/www.inecnigeria.org/election/show\\_index\\_result.php?ele\\_id=2804](http://web.archive.org/web/20070513202947/www.inecnigeria.org/election/show_index_result.php?ele_id=2804).

<sup>2</sup> Atiku Abubakar's name was erroneously left blank in the final results table posted on the INEC website, but the number of votes he received was included.

<sup>3</sup> The final results posted on the INEC website did not include African Democratic Congress (ADC) candidate Patrick Utomi, even though he did participate in the presidential election.

### *A5: Indicative Interview Questions*

- 1 How would you describe the conduct of elections in Nigeria?
- 2 The Constitution referred to INEC as an agency of the federal government, what would you say about that?
- 3 Are there any difference between previous elections and the 2007 and 2011 elections?
- 4 What factors would you say have account for the changes?
- 5 What factors could you say are responsible for the differences between the 2007 and 2011 elections especially considering both were characterised with forms of violence?
- 6 Do you think there is any relationship between intra party politics and the way elections are fought?
- 7 In what ways would you talk about the role of political parties, civil society in Nigerian democratic process?
- 8 How about the courts, election tribunals, supreme courts their role in any democratic system cannot be overemphasised, but how would explain the role they played in conduct of both 2007 and 2011 elections?
- 9 Could you please talk from your experience as a candidate/party/electoral official or expert on the credibility of Nigerian electoral process in 2007 and 2011?
- 10 By your monitoring activities since 1999 and experience with electoral politics in Nigeria what could you say are major problems elections in country?
- 11 But election administration to a degree depends on people's political culture too?
- 12 Is there any connection between the conduct of elections in Nigeria and the nature government conduct their activities?
- 13 Could you describe Nigerian politicians as democrats?
- 14 Do you agree that presidential system of government with weak federal arrangement is part of the major problems facing the democracy in Nigeria?
- 15 How would you attribute Nigerian democracy with the practice of winner take all politics?

*A6: Mode of Party Primaries in the 2011 Elections*

<b>S/NO</b>	<b>Political Party</b>	<b>Mode of Nomination</b>
a)	Action Congress of Nigeria	IND
b)	African democratic (ACN) Congress (ADC)	IND
c)	All Nigeria Peoples Party (ANPP)	IND
d)	African Political System	IND
e)	African Renaissance Party (ARP)	IND
f)	Better Nigeria Peoples Party (BNPP)	IND
g)	Congress for Progressive Change (CPC)	D
h)	Fresh Democratic Party (FDP)	IND
i)	Hope Democratic Party (HDP)	IND
j)	Liberal Democratic Party of Nigeria (LDPN)	IND
k)	Mega Progressive Peoples Party (MPPP)	IND
l)	National Conscience Party (NCP)	IND
m)	National Majority Democratic Party (NMDP)	IND
n)	National Transformation Party (NTP)	IND
o)	Peoples for Democratic Change (PDC)	IND
p)	People Democratic Party (PDP)	IND
q)	Peoples Mandate Party (PMP)	IND
r)	Peoples Progressive Party (PPP)	IND
s)	Social Democratic Mega Party (SDMP)	IND
t)	United National Party for Development (UNPD)	IND